United States Court of Appeals

for the Second Circuit

APPENDIX

75-1197

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

NORMAN RUBINSON, EDGAR REYNOLDS, WILLIAM CHESTER, LAWRENCE LEVINE,

Defendants-Appellants.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Vol. IV—Pages 1,068a to 1,431a

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THE COURT: We are going to recess at this time because there are some documents which have to be marked in connection with the testimony of the next witness. We will recess early today, until 10 o'clock tomorrow morning, and the jury is excused.

(Jury leaves the courtroom.)

THE COURT: Are those exhibits which you referred

to listed in this group of exhibits list that I have just been handed?

MS. HARRIS: A good portion of them are, your Honor. In addition to that, there are exhibits the list which which your Honor already has, for various brokerage accounts. I believe it starts some place -- 194A. You will notice that some exhibits thereafter have been received into evidence I think pursuant to a stipulation when Mr. Stein was on, but a great many of them have not. We are talking now --

THE COURT: So that this group would follow that list?

MS. HARRIS: That's right.

THE COURT: The last number on that list is 229, and then we added some, 499, 498 and 497 earlier today. So there is a gap between 229 and 499, according to the numbering?

MR. WOHL: That's right, your Honor. That is why I chose those 490 - something numbers because I knew the next series started at 500 and I didn't want any duplicating numbers.

THE COURT: This is a large number of exhibits and do you intend to offer all these exhibits in evidence?

MR. ROBSON: Your Honor, may I make a suggestion--

THE COURT: Can I get an answer to my question first? Do you intend to offer all these exhibits in evidence?

MS. HARRIS: Yes, your Honor.

MR. ROBSON: Your Honor, I was going to make the suggestion, which I have seen followed in a number of other cases, which may be able to save everybody a lot of time.

If I understand correctly, all of these exhibits are being offered for the purpose of providing a basis for the charts which are going to be testified to by a Government agent, is that correct?

MS. HARRIS: Among other purposes. Certain of them will be selected out and witnesses will refer to them, but, basically, they are the underlying documents for the charts.

MR. ROBSON: I was going to suggest a procedure I have seen followed, for the chart to be identified, for the witness to testify that the chart is based upon and just list the exhibits without having the exhibits introduced in evidence, and for the documents to be available for counsel if they want to double check the information on the charts, so we don't have to have a couple of hundred more exhibits in the trial.

I think all counsel would agree to that kind of

approach. We don't really question the Government agent if he said he copied transactions from the books of Lockwood, and so forth, as long as we can double check them at our leisure.

MR. FISCHETTI: I would agree, your Honor, and I would point out there are more than a couple of hundred and just the time the clerk is going to have to take to number each exhibit and place a tag on it, a number on it, so that your Honor would have a complete list, would be very, very burdensome.

MS. HARRIS: Your Honor, the exhibits are premarked number one, and it is just a question of marking them into evidence. We are selecting out from -- what they are, incidentally, are documents referring to trades of Stern-Haskell stock through Lockwood and various other brokerage firms and we will select out from these various sets to use with witnesses and I would say that that probably isn't completely firm yet, so that we don't know exactly which ones they are and since they are premarked, it would seem to be a better practice to go ahead and receive them all into evidence.

THE COURT: With respect to that, do you want the clerk to mark them into evidence tonight?

MS. HARRIS: Whatever your Honor wants.

THE COURT: The witness is going to be called in the morning and is going to be asked to testify from those exhibits. That is what I am getting at. Is he actually going to use those or can the clerk mark those at another time.

MS. HARRIS: The first witness tomorrow -- in fact, perhaps the first two or three I don't believe will refer to exhibits within that particular batch. They will be referring to other exhibits. As far as the 501 to 669 series -- I believe it goes to 669T -- the first few witnesses will not be referring to those documents, I don't believe.

THE COURT: Well, it is just a question of when would be the best time to mark those. Can he start marking some now and maybe finish in the morning?

MS. HARRIS: I would think so, your Honor, yes.

THE COURT: And the defendants have consented to have those received in evidence, is that it?

MR. ROBSON: No, not yet, your Honor. We stipulate to the authenticity and the fact that they are records kept in the ordinary course of business.

MS. HARRIS: Perhaps I should read the stipulation, your Honor.

THE COURT: All right.

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MS. HARRIS: It is stipulated between counsel for the Government and counsel for the defendants and by each defendant that if an authorized representative of Granger & Company, Shaskan & Company, TPO and Lockwood & Company, who is familiar with the books and records of that brokerage firm, were called as a witness, each would testify with respect to documents from his firm that the Government exhibits set forth below are all authentic documents or copies thereof.

It is further stipulated that each would testify that the entries on each document were made in the regular course of business of the stock brokerage firm the document appears to be from and that it was the regular course of business of each brokerage firm to make and maintain such entries and records.

I will put the exhibits to which that refers on the record.

194A, 196A through H, which are Granger records referring to the Feiffer account;

Exhibits 198A and B, and 200A through C, which are Shaskan records referring to the Feiffer account;

202 and 203, which are TPO records referring to the Feiffer account;

205, 206A through K, 207A and B, 208A through E,

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209A through F, 210A through D, which are both Granger and Lockwood documents referring to the B'Noth account;

Exhibit 232 and 233, which are Granger exhibits referring to the Silber account;

Exhibits 235 and 236A and B, which are Lockwood documents;

Exhibit 300, which is the Lockwood blotter.

It is further stipulated that as to Exhibits 501 through 669T, which involved documents from over ten additional brokerage firms, that if an authorized representative of those firms were called he would testify with respect tothe documents from his firm that those Government exhibits are all authentic documents or copies thereof, and it is further stipulated that each would testify that the entries on each document were made in the regular course of business of the stock brokerage firm the document appears to be from and that it was the regular course of business of each brokerage firm to make and maintain such entries and records.

All of the documents are with respect to transactions in Stern-Haskell stock. That would be the stipulation, your Honor.

THE COURT: Are there going to be objections to the admissibility of these documents, did you say,

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Mr. Robson?

MR. ROBSON: Well, not having them in front of me, I would not object to the documents of Granger, Shaskan and TPO which deal with the Feiffer account.

I would object tothe documents of Granger and Lockwood on the B'Noth Jerusalem account.

I object to the documents of Granger which deal with the account of Silber.

I don't know what Lockwood documents 235 are again, but I think those are delivery tickets--

MS. HARRIS: 235 is the Lockwood running position letter on Stern-Haskell stock.

MR. ROBSON: I would ask that that be taken subject to connection.

500, also, I would not object to subject to connection.

THE COURT: These other objections that you are making are subject to connection?

MR. ROBSON: No. The ones before that I object to entirely with respect to Mr. Feiffer.

THE COURT: On what ground?

MR. ROBSON: On the grounds that there is absolutely no relationship betweenMr. Feiffer and those documents. They deal with transactions by B'Noth Jerusalem

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with Granger and Lockwood and there is no testimony that Peiffer had anything whatsoever to do with the transactions of B'Noth Jerusalem as to Granger and Lockwood.

THE COURT: Are they offered against Mr. Feiffer?

MS. HARRIS: They are offered against every defendant, your Honor, aspart of the conspiracy evidence.

THE COURT: I see.

MR. ROBSON: With respect to the final group, which is 501 to 669T, I am not sure what they were-- I misunderstood before-- they are order tickets of other brokerage firms? I don't know which brokerage firms they are and I don't understand on what basis they are being offered against my client certainly.

MS. HARRIS: Again, your Honor, what those documents are, at least 501 through 668, theyare order tickets made out by the traders at Lockwood with respect to Stern-Haskell transactions. Attached to them are trading tickets reflecting the same transaction called confirmations or comparisons, apparently, in the business, whereby a buying broker and a selling broker confirm to each other the transaction.

THE COURT: All having to do with Stern-Haskell?

MS. HARRIS: Yes, your Honor.

MR. ROBSON: 501 to 668 are Lockwood transactions

but also have the other side, the brokerage house?

MS. HARRIS: Yes.

MR. ROBSON: I would not object to them subject to connection.

THE COURT: Then we can admit these documents,is that it?

MR. ANDREWS: Your Honor, with respect to Lockwood documents, may I be heard?

THE COURT: Yes.

MR. ANDREWS: There was testimony at the civil trial that the documents seized by the Government were voluntarily delivered by Lockwood and while in the possession of the Government their records were in chaos by the time the civil trial occurred, there were books missing, they were in disorder and unless someone can take the stand and lay a foundation for these records,I won't stipulate to their completeness and accuracy and I don't think a partial set of records can come in under the business exemption records to the hearsay rule.

THE COURT: Any other objection?

MR.HIGGINS: Your Honor, I have no objection to the exhibits with the exception of the Lockwood exhibits. I am prepared to stipulate to avoid having a witness testify to identify the other firms' records, but as to Lockwood,

your Honor, I am not prepared to stipulate as to that unless someone is going to represent that they are authentic and complete.

I was two minutes ago, but from what I hear now there is no one who is prepared to testify as to their authenticity and completeness.

MR. ANDREWS: I can stipulate to the order tickets of Lockwood and Stern-Haskell, and Mr. Levine kept his own set, which was a practice of his, and those we know were complete to the best of our knowledge, but the rest of this stuff, Judge, we can't stipulate to its completeness or accuracy, especially since there is sworn testimony that it was not.

MR. WOHL: I think the problem here is that there is a substantial question about whether or not the firm, Lockwood & Company, was in compliance with the rules and regulations of the Securities and Exchange Commission with respect to the records it was supposed to keep.

It could well be that they didn't keep the records they were supposed to keep. The point is, however, that it would seem, and we believe we could establish, if we have tocall a witness todo so, that each and every one of the order tickets, delivery tickets, and other types of documents, is indeed an authentic Lockwood & Company document.

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THE COURT: I thought that was the stipulation?

MR.WOHL: Right.

MR. ANDREWS: I am sure what they have is authentic; the question is completeness.

THE COURT: You mean there may be missing documents?

MR. ANDREWS: I am sure there are a great many missing. The testimony is that books were found missing and they were moved several times in various Government agencies --

THE COURT: We are only concerned with what they want to admit. The question is whether they are admissible, not something that is missing. They don't have to put in every scrap of paper to prove their case, do they?

MR. ANDREWS: These purport to be, at least as described to me, a set of the records of the transactions.

THE COURT: They don't purport to have every one and they don't need every one to prove the case.

MR. ANDREWS: What we are going to come up with, your Honor, they are going to try to show that certain trades are suspicious and it is going to get very, very complicated and each and every trade is significant and we will show that it is significant.

Now, we have to have a stipulation that it is

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complete or else no -- who can draw conclusions from a partial record of trading in the stock?

THE COURT: I think the stipulation includes the statement by the Government, or should, that these are not all the records, these are what they have.

Is that it?

MR. WOHL: That is a correct statement of the fact, your Honor.

MR. ANDREWS: If they will stipulate some are missing, I will agree what they are coming in with is authentic but not complete.

MR. WOHL: We will stipulate that it is everything we have and it appears some of the records are missing.

THE COURT: With that understanding, it will be admitted ino evidence.

* * *

CROSS EXAMINATION

BY MR. RUBINSON:

Q Mr. Vogelson, you said on direct examination that you met me at a party.

Where was that party?

A That party was at Sidney Stein's apartment.

Q Did you meet me on a social basis or a business basis?

A On a social basis.

Q You testified on direct that you had an account in your Granger and Company, B'Noth Jerusalem, is that correct?

A That's correct.

Q Who recommended B'Noth Jerusalem?

A Harry Silber.

Q Who brought B'Noth Jerusalem to your office?

A Harry Silber.

Q Who signed the account card?

A The Rabbi.

Q Was Norman Rubinson there?

A No.

Q Did Norman Rubinson ever discuss Stern-Haskell stock with you?

A No.

Q How many occasions did you meet me in 1968-1969, and up until the present time?

A Oh, I would say approximately ten times.

Q Was that on a social basis?

A Yes, it was on a social basis.

Q In all those social meetings that we had, did I ever discuss Stern-Haskell with you?

A Never.

Excuse me. When I say on a social basis, you did open an account with me at one time and I think you made one trade, but the substance of our relationship was not business, it was social.

Q What did I trade in in your house?

A Some stock on the American Stock Exchange.

Q Do you have that account card here?

A No, I don't.

Q Did the Government ask you to bring that account card?

A No.

Q Now, this is only to the best of your recollection that I have an account there, that is true?

A That's correct.

Q You wouldn't say "yes" for sure, would you?

A No, I'm absolutely certain that you had an

account with me, but I'm also absolutely certain that you only made one trade on a stock on the American Stock Exchange.

Q You don't recall the name of that stock?

A No, I don't.

Q All these shares that you sold through B'Noth Jerusalem, who called you and directed those trades?

A The Rabbi.

Q Did the Rabbi ever mention to you that I was involved with B'Noth Jerusalem?

A No.

Q All the checks that you received when you read those exhibits that went to B'Noth Jerusalem or to Albert Feiffer, does my name appear on any of those checks?

A No.

Q So it is your testimony now that it would be fair to say that as far as Stern-Haskell or Diston or Mobile Home Ventures, or any of the stocks that this trial is about, I never mentioned to you, and never asked you to do anything, is that correct?

A That's correct.

MR. RUBINSON: Thank you, Mr. Vogelson. That is all.

THE COURT: All right. Mr. Robson?

***

Q When you commenced selling Stern-Haskell stock for the accounts of B'Noth Jerusalem and Albert Feiffer in 1969, did you follow what you already described as your practice in terms of the pink sheets and in terms of calling market makers and getting the market from them?

A That's correct. I did.

Q Do you recall which brokerage firms you were calling at that time?

A Well, of course I was calling Lockwood Securities, and I do remember a firm by the name of F. O. Barroff. I don't recall the names of the other ones. I would have to have a set of pink sheets in front of me to tell you who the other firms were.

Q Who wouldyou ask for when you called those firms?

A The trader in Stern-Haskell.

Q And at Lockwood, who would you talk with?

A I spoke to a man by the name of Mr. Larry Levine

often on the phone.

Q Where did you place --

MR. ANDREWS: May I have that question read back? There was a word I missed, your Honor. The answer.

THE COURT: Read the answer, Mr. Reporter.

(Answer read.)

THE COURT: Excuse me, Mrs. Harris. We are going to recess now until 2 o'clock for lunch.

The jury is executed.

(Jury excused.)

THE COURT: All right, the witness is excused until 2 o'clock.

(Witness excused.)

(Adjourned to 2 p.m.)

* * *

Q And the "cancelled" which is now across it, is it fair to say occurred much later? In other words, Granger would not have received --

MR. ANDREWS: I object to this. This is leading and calls for a conclusion the witness can't make and I am sure the witness never saw these certificates in the course of his business.

Q Can you explain under any circumstance that Granger would have received these shares in with that cancelled stamp?

A No, we would never receive it with a cancelled stamp on it.

Q Would you turn the share over --

THE COURT: Do all the jurors have the back of the certificate?

All right.

Q Directing your attention to the Lockwood signature, which is guaranteed by Ben Malmeth, would Granger have accepted the certificates with just that much of an endorsement on them?

MR. ANDREWS: Your Honor, I am going to object. Maybe we can stipulate to whatever counsel wants to prove,

but not through --

THE COURT: No, let the U. S. Attorney conduct her own examination. If she wants to stipulate, she will ask you. Sit down.

MR. ANDREWS: Well, your Honor, I object to the question --

THE COURT: Sit down. Proceed.

Q Would Granger have accepted the certificates for delivery with just that signature, Lockwood, with the Ben Malmeth signature guarantee?

MR. ANDREWS: I object.

THE WITNESS: Should I answer?

THE COURT: Yes.

A No. They have the signature guaranteed by the American Bank and Trust Company.

Q And the signature guarantee by the American Bank and Trust Company guarantees what?

A Guarantees that this is good stock coming in --

MR. ANDREWS: Objection, your Honor.

A The signature on here, it is guaranteeing Lockwood's Mr. Ben Malmeth -- is guaranteeing -- the American Bank and Trust has guaranteed Malmeth's signature.

Q With the bank's guarantee Granger --

A Accepts the stock.

Q Looking at the Granger stamp that is on there, when is that stamp placed on these certificates?

A When it comes in and is ready to be delivered out we place the Granger stamp on it guaranteeing that the tax has been paid or we are paying the tax on it.

THE COURT: Keep your voice up, please.

A It is a guarantee that the stocks due on this is being paid by Granger and Company and is always done, my cage assures me it is always done.

Q Does any stock certificate ever leave Granger without the Granger stamp on it?

A No stock certificate ever leaves Granger and Company without the stamp on it.

MS. HARRIS: No further questions of this witness.

THE COURT: Mr. Rubinson, do you have any questions of this witness?

CROSS EXAMINATION

BY MR. RUBINSON:

Q You are an over-the-counter trader in Granger and Company, Mr. Abt, is that correct?

A Yes.

* * *

* * *

Q Did anyone suggest you go to Lockwood and sell them the stock?

A No.

Q Nobody steered you, in other words?

A No.

Q You just went to them as the best market-maker, is that correct?

A That's correct.

Q And you had limit orders, did you not?

A That's correct.

Q By that you mean your customers told you to sell at a specific price and at a specific price only, is that correct?

A That's correct.

* * *

* * *

THE COURT: And your objection?

MS. HARRIS: The objection is that Mr. Andrews appears to be making the witness an expert witness in an ever-widening circle of subject matter and time frame.

The Government has no objection but he shouldn't be leading him.

MR. ANDREWS: I haven't asked an expert question.

* * *

Q Is it not a fact, Miss Steinberg, that frequently when you called to speak to Feiffer you wound up speaking with Mr. Stein about this account?

A Yes, sir.

Q Is it not a fact, Miss Steinberg, that Mr. Feiffer was frequently just a messsenger, running downtown to bring checks or pick up checks?

A Yes, sir.

Q Is it also not a fact that Mr. Stein issued orders to sell on this account with the knowledge of Mr. Lane, who was the account representative?

A Yes, sir.

Q And that when you spoke to Mr.Lane you frequently said to him, "Sidney said to sell X number of shares of Stern-Haskell stock"?

A Yes, sir.

* * *

***

Q What did Mr. Levine do as head trader?

A Supervised the trading room.

Q Who had final authority on what stocks any trader would trade?

A Mr. Levine.

Q Who had final authority as to the position that any trader would take in a security?

A Mr. Levine.

Q In his position as head trader, did he review --

MR. ANDREWS: Objection to the leading nature of the question. The question should be what did he do as a head trader.

THE COURT: Yes.

Q Is there anything else he would do with respect to his duties as head trader?

A Yes. He would review each individual trader's positions.

Q How often would he do that?

A Every day or two.

Q In addition to responsibilities as head trader, did Mr. Levine have his own list of stocks in which he was making a market?

A Yes.

Q Who made the decisions with respect to those stocks?

A Mr. Levine.

Q During the summer of 1969, was a stock by the name of Stern-Haskell among the stocks that he was making a market in?

A Yes.

Q As Mr. Levine's assistant, what were your duties?

A I kept Mr. Levine's positions, I did his paper work and also put in the pink sheet prices of the securities.

Q When you say you kept a list of his positions, you mean with respect to the stocks he was trading or all the stocks that were being traded?

A The stocks that he was trading.

Q How did you go about preparing a pink sheet listing for his stocks?

A After the close on a particular day, close of the market, we got computer cards from the National Quotation Bureau, which is the pink sheets.

Any cards that were deleted, that we didn't have a computer card for, I tried to make a card up by hand. I put the prices in after the close and the next day pink sheets would come, pick it up, messenger from the National

Quotation Bureau would come and pick it up, and that would be printed for the following day.

Q About what time would the messenger from the National Quotation Bureau --

A About 11 o'clock, 11, 12 o'clock.

Q That would be the day after you had made up the prices at the end of trading?

A Right.

Q And the listing itself would appear the following day in the pink sheets, is that correct?

A Absolutely.

Q How frequently do the pink sheets circulate?

A Daily.

Q Is it possible to change that price?

A Yes.

Q After you put it in on the card, after it was picked up?

A Yes.

Q Until what time the day before it was published could you change the price?

A I believe it was 1 or 2 o'clock.

Q In the --

A Afternoon, 1 p.m.

Q Of the day preceding publication?

A Right.

Q In the trading room, how did most of the orders come to Lockwood?

A Excuse me.

Q How did the orders come in?

A By phone.

Q When the orders for Mr. Levine's stock came in and he was there, who would take the order?

A Any trader, anybody in the trading room that answered the phone.

Q Why don't you describe how that worked, from then on, just describe a trade coming in on one of Mr. Levine's stocks.

A Another broker would call on a particular security that one of the traders were trading with Lockwood and Company and assuming I answered the phone, if the market was posted on the board in front of us, I would lay out the market. The other broker would then reflect as to what he wanted to do. I would reflect it to the trader making the market in the particular security, and he would then reflect it back to me as to what he wanted to do. I would tell the broker what we are doing that would execute a trade and I would then write up a trading ticket, because I was the one that answered the phone, and complete the

trade. Then I would write up the trading ticket with information as to the security, the amount of shares, the price and the broker that we did the trade with and it would then be clocked.

Q If that order had been for Stern-Haskell, when you say you would lay out the market, what do you mean?

A I would give him the bid and offer.

Q And you would tell that to the broker calling?

A Absolutely.

Q Who would you speak with in relating what that broker wanted to order?

A I would speak to the trader, to Mr. Levine, in the case of Stern-Haskell.

Q Who would then tell you what to do with respect to Stern-Haskell?

A Mr. Levine.

Q Who made out the order ticket?

A I did.

Q Did you make out the order tickets on all of Mr. Levine's transactions?

A No.

Q Who did?

A Whoever answered the phone.

Q If Mr. Levine wasn't there and an order came in for Stern-Haskell, would you tell us how that order was executed?

A When I answered the phone?

MR. ROBSON: I object, your Honor. The witness has not testified there were occasions when an order came in and Mr. Levine wasn't there.

MR. ANDREWS: We will stipulate and agree that that is the fact, whether or not he so testifies.

MS. HARRIS: You are stipulating that he was not there at times?

MR. ANDREWS: Yes.

Q When Mr. Levine was not there, how would trades in Stern-Haskell be executed?

A We would have the same procedure as before, except a registered trader would have to make the actual decision.

Q As assistant trader, were you registered?

A No.

Q Proceed.

A Assuming I answered the phone and an order came in on Stern-Haskell, I would turn around to one of the other traders and ask him what he would like to do and we would quickly discuss the position on the trade and the

feeling that was left by Mr. Levine.

Q When Mr. Levine was not in the office, not in the trading room, did he have a conversation with you about his stocks before he left?

A Yes.

Q Did Mr. Levine keep you informed of what he wanted you to do about his stock?

A Right. He left indications about what he wanted to do about his stocks.

Q How often would Mr. Levine talk to you about what he wanted to do with the stocks?

A Daily, almost daily.

Q What you did with his stocks was at whose direction?

A Excuse me?

Q At whose direction was everything that you did with his stocks?

A Mr. Levine's.

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Q Did you know a man by the name of Sidney Stein?

A Yes.

Q When did you meet him?

A Also during the summer of 1969.

Q Where did you meet him?

A In the trading room of Lockwood & Company.

Q Who introduced you to Mr. Stein?

A Mr. Levine.

Q Do you recall how Mr. Stein was identified?

A No.

Q Did you see him after that?

A Yes.

Q How often?

A An average of once a week, maybe.

Q And where did you see him?

A In the trading room.

Q Do you know a man by the name of Al Feiffer?

A Yes.

Q When did you meet him?

A Also in the summer of 1969.

Q Where did you meet him?

A In the trading room.

Q Would you look around the courtroom and see if you see the man you knew as Al Feiffer?

A The gentleman sitting on the end.

MR. ROBSON: We will concede the identification.

Q Who introduced you to Mr. Feiffer?

A Mr. Levine

Q Do you recall how he was identified?

A No.

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Q Did you see him after that?

A Yes.

Q How often?

A Also on an average of once a week.

Q And where?

A In the trading room.

Q Did Mr. Feiffer come there alone or was he with someone?

A He was with someone usually.

Q And who was that?

A Mr. Silber, I believe.

Q Was he with anyone else?

A Yes, on occasion.

Q And who else was he with?

A I don't know. I don't know the name-- a Mr. Stein was with him usually also.

MR. ROBSON: I didn't hear that.

A Mr. Stein was with them.

Q Would you look around the courtroom and see if you see any other people who were at Lockwood with Mr. Stein and Mr. Feiffer and Mr. Silber?

A No.

Q You see no one that you recognize as having been there with them?

A No.

Q When Mr. Stein and Mr. Feiffer and Mr. Silber and other people who were with them came to Lockwood, what did you see them do?

A They usually came to see Mr. Levine.

Q Did you see them talk with Mr. Levine?

A On occasion.

MR. ROBSON: I'm sorry, what is that?

A On occasion.

Q Did you ever overhear what they talked about?

A No.

Q Would they generally talk in the trading room?

A No.

Q Where would they go?

A Up to the cage, the back office.

Q Where was the back office?

A It was, I believe, two flights above the trading room, in the same building.

MR. ROBSON: If your Honor please, I am going to object to this witness' testimony unless he testifies that he went up with them on every occasion they went up there.

How does he know where they went?

Q How do you know they went to the cage upstairs?

A I had occasion to go up to the cage at times.

Q Did you have to stay in contact with Mr. Levine?

A Yes.

Q Did anyone ever tell you that they were going up to the cage?

A Yes.

Q Who told you?

A Mr. Levine.

Q And did you reach Mr. Levine up there after they had left the office?

A Yes.

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Q Thank you.

Mr. Mark, who was your boss at Lockwood & Company?

A Who was my boss?

Q Yes.

A I took my orders from Larry Levine.

Q Can you tell me-- and you worked in the trading room as a trader's assistant, is that correct?

A Correct.

Q Learning to be a trader, is that so?

A Correct.

Q Who was the overall boss of Lockwood & Company?

A I don't know.

Q I am going to show you the transcript of your testimony at the civil trial at which you testified in January of 1972, at page 2125, specifically lines 18 and 19.

Would you look at that and tell me if it refreshes your recollection as to who was the overall boss at Lockwood & Company?

(Handing to witness)

A Well, Ben Malmeth ran the back office, or the cage. Larry Levine ran the trading room.

Q I am going to show you as well your grand jury testimony on February 20, 1974, the first page of the transcript, the question I am going to indicate with my finger. Read that and tell me if it refreshes your recollection as to who was the overall boss at Lockwood and Company.

A You want me to read it now?

Q Youread it to yourself and tell the jury whether or not it refreshes your recollection.

(Pause.)

A I would still have to say what I said.

Q All right.

Will you say what you said on that subject?

A Excuse me.

Q Will you say what you said on that subject?

A Yes.

Ben Malmeth ran the cage and Larry Levine ran the trading room.

Q You were asked in the grand jury, were you not, who was the overall boss of the firm of Lockwood and Company, or a question to that effect?

A I believe if I recall correctly, or partially recall, I was asked also who signed my checks, or whatever.

Q Who was that, by the way?

A It was Ben Malmeth.

Q Ben Malmeth signed your paycheck?

A I believe so.

Q What was your response to the grand jury when you were asked the question who was the overall boss of Lockwood?

A I said Ben Malmeth.

Q You said Ben Malmeth, is that correct?

A Correct.

Q Thank you. I am not trying to confuse you. I know that these events happened long ago.

During the summer of 1969, do you specifically recall Larry Levine being quite ill?

A Quite ill?

Q Yes. Do you recall him throwing up blood. Do you remember him --

A I remember him going to a doctor, but I don't know about quite ill. He did go to the doctor.

Q Do you recall that often during the day he was not on the trading desk but resting elsewhere outside the trading room?

A He was not in the trading room.

Q Do you recall that often he was not in the trading room, is that so?

A I don't know if he was resting, true.

Q Whatever he was doing he was not in the room, is that correct?

A Correct.

Q On occasions when he was not in the room you would oversee his trading stocks, is that correct?

A Correct.

Q And even though you received approval from other traders for any trade you executed you pretty much -- the thing that went into those trades was yourself, is that correct?

A No.

Q That is not correct?

A No.

Q Did you ask for guidance from other traders while Mr. Levine was not there?

A At times.

Q And did you act in accordance with whatever instructions Mr. Levine had given you before he left?

A To the best I could.

Q Do you recall whether or not he gave you any specific instructions with respect to stock of Stern-Haskell on occasions that he was not present in the trading room?

A No.

Q Did he tell you to do anything improper with respect to the stock of Stern-Haskell?

A No.

Q Did he tell you to give any preferential treatment to any seller of the stock of Stern-Haskell?

A No.

Q As a matter of fact, during the entire period of time that you were at Lockwood and Company, did Mr. Levine ever tell you to do anything at all improper?

A No.

MS. HARRIS: Objection, your Honor.

MR. ANDREWS: He has answered the question, your Honor.

THE COURT: What's the objection?

MS. HARRIS: "Improper."

THE COURT: What do you mean by that, Mr. Andrews?

Something illegal?

MR. ANDREWS: Either illegal or something counter to what this man's instincts and experience tell him was the proper thing for a trader to do in a given instance with respect to any stock transaction.

THE COURT: All right. I will let you ask the question.

Q Can you tell me yes or no whether Mr. Levine ever gave you any such instructions?

A No.

Q To do anything improper?

A No, he didn't.

MR. CHESTER: I couldn't hear the answer.

THE WITNESS: No, he didn't.

Q Thank you, sir.

Do you recall what his overall instructions were with respect to Stern-Haskell, if any?

A No.

Q Did he distinguish in any way whatever the manner in which you were supposed to deal with Stern-Haskell stock during his absence?

A Specific instructions?

Q Yes.

A No.

Q And did you in fact effect many trades in the stock of Stern-Haskell during Mr. Levine's absence during the summer of 1969?

A I didn't really effect any trades in anything.

Q Well, did you take the calls?

A Yes.

Q And did you confer with other traders in Mr.

Levine's absence?

A Yes.

Q And did you orally make contracts over the phone with the other side?

A Yes.

Q And whatever you did when Mr. Levine wasn't present was with the approval of some other trader in the house, is that correct?

A Yes.

Q In that sense you did effect transactions, isn't that so?

A Yes.

Q And did you do anything improper with respect to that stock?

A No way.

Q And were you told by any of the other traders to do anything improper with respect to that stock?

A No.

MS. HARRIS: What stock is Mr. Andrews talking about?

MR. ANDREWS: I am talking about Stern-Haskell and I think the witness understood me to be talking about Stern-Haskell.

Q Is that so, sir?

A Yes, sir.

Q Thank you.

Sir, do you know how many stocks Lockwood traded during that period?

A The total?

Q Yes. Your best estimate.

A 250. 200.

Q Have you finished your answer?

A 250, around.

THE COURT: 250 shares.

THE WITNESS: 250 different securities, companies.

Q Different stocks?

A Yes.

Q Now, do you know -- and when I say traded, I mean made a market in, was ready to buy and sell any quantity at any time?

A I understand.

Q I just wanted to make sure the jury does. I am a layman, and these people are laymen.

Lockwood was ready to buy and sell and make a market in any one of 250 stocks, at least, during that period, is that correct, sir?

A Why do you use the word "at least." About.

Q About 250 give or take a few?

A Yes.

Q During that period of time do you know how many stocks Mr. Levine was the trader in?

A About 80, 90.

Q It could have been more?

A Maybe a little bit.

Q Certainly not less, is that correct?

A 80 or 90 is about right.

Q Do you know how many on an ordinary day, how many trading tickets Lockwood would write?

A A rough guess would be 200, 250.

Q Lockwood would do roughly 200 to 250 trades on an average day, is that correct?

A About.

Q Do you know how many trades about Levine would do on an average day as a trader at Lockwood and Company?

A About 70.

Q How many years have you been an actual trader, sir?

A Since Lockwood, I have been in trading, to the present date.

Q Who is the best trader you ever met, in all your experience?

MS. HARRIS: Objection, your Honor.

THE COURT: Sustained.

Q Did you ever see or hear during the whole period of time you were with Lockwood, Larry Levine do anything-- anything -- improper or unlawful with respect to any trade in any stock?

MS. HARRIS: Objection, your Honor.

THE COURT: Sustained.

Q You testified that Al Feiffer, Sidney Stein would come up to the office periodically, is that so?

A Yes.

Q Isn't it a fact, sir, that many, many, many people came up to the office who were not employees of Lockwood and Company during the period that you were there?

A What do you mean by many, many?

Q Well, lots of people --

A People came up.

Q People come up often, isn't that so?

A Yes.

Q And they could be businessmen coming up to see a trader, isn't that true?

A True.

Q To try to get that trader interested in making a market in their particular security?

A Correct.

Q Wouldn't you say, in fact, that traders are besieged by businessmen and public relations people to try to get them to make markets in their stock?

MS. HARRIS: Objection. Ask the witness what he saw and what he heard. These questions are being posed in a hypothetical fashion.

MR. ANDREWS: I am asking isn't it his experience as a trader and in his days at Lockwood that public relations men often come and see traders in an effort to get them to have an interest in the stock in which they have an interest?

THE COURT: Well, that is a different question. The previous question was whether they didn't beseige --

MR. ANDREWS: I withdraw the previous question.

THE COURT: You can ask him whether he observed other businessmen coming up to talk to traders,

MS. HARRIS: Did he see and know that other

businessmen were coming up and talking to traders?

THE COURT: Yes.

THE WITNESS: Which is the question?

THE COURT: Did you see other businessmen come up through and talk to traders?

THE WITNESS: Yes.

Q And you know that also you saw public relations men come up during that period, didn't you, financial public relations men?

A Possibly -- seldom.

THE COURT: Well, did you see it?

THE WITNESS: Seldom.

THE COURT: He is asking what you observed of your own knowledge and what you know of your own knowledge, understand?

THE WITNESS: Yes.

THE COURT: Do you know of your own knowledge that financial public relations men came up there to talk to traders?

THE WITNESS: Yes.

Q And you used to see this happen at Lockwood?

A Yes.

Q And it used to happen often, didn't it?

A No.

Q Not often?

A No.

Q How often would a businessman or a public relations man or somebody of that kind come up to the office?

A Lockwood and Company had parties.

Q That is what I am going to get to next. Did you tend to associate those things with the parties or more with the day to day course of events?

A More with the parties.

Q In fact, Lockwood used to have parties all the time, didn't they, two or three days a week, maybe?

A No.

Q At least once a week.

A I think it was once a week or once in two weeks.

Q There was pretty much an open bar at Lockwood?

A Yes.

Q Anybody who wanted to come up and have a drink and talk, they were free to do so?

A Yes.

Q And they --

THE COURT: Are you going to let him answer or are you just going to run on? Do you want an answer?

MR. ANDREWS: Yes.

THE COURT: Slow down and give him a chance to

answer and don't make speeches.

Q Your answer was yes?

A What was the question?

Q It was pretty much an open bar at Lockwood and people were pretty much welcome to come in and have a drink, isn't that so?

A True.

Q Did you ever in all your time at Lockwood and Company meet a Phil Kaye there?

A Phil Kaye?

Q Phil Kaye?

A The name rings a bell, but I don't recall.

Q You have no recollection of having met a Phil Kaye there?

A No.

MR. ANDREWS: Your Honor, at this time I have no further questions of this witness. I would like to advise the Court that we had intended to call him as a defense witness. He was a defense witness at the civil trial and I intend to recall him at a later time in the case should we decide that a defense is appropriate?

THE COURT: All right.

Any further examination by Mr. Gardner?

MR. HIGGINS: No.

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Mr. Andrews.

CROSS-EXAMINATION

BY MR. ANDREWS:

Q My name is Tom Andrews and I am Larry Levine's lawyer and Walter Wax' lawyer.

Do you recall Walter Wax' daughter working for

Lockwood & Company during the summer of 1969?

A Yes.

Q And do you recall that Walter Wax [illegible]d to stop by and visit his daughter while she was working at Lockwood during that summer?

A Yes.

Q And that would account no doubt for much of the reason for his being there as far as you know, is that correct?

MS. HARRIS: Objection, your Honor.

The witness has no way of knowing.

THE COURT: Yes. Sustained.

Q You do know at any rate he would stop by often to visit his daughter at your office, is that so?

MS.HARRIS: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Ochart, who was your boss at Lockwood & Company?

A Ben Malmeth.

Q Whose company was it?

A His.

Q His? Ben Malmeth's?

A Yes.

Q Thank you.

Lockwood & Company was one of the few over-the-counter houses to clear with a bank,isn't that so, at that time?

A There were a lot.

MS. HARRIS: Objection, your Honor.

Q There were a lot?

A Brokerage firms clearing with banks.

Q There were a lot that were not, though, isn't that true?

THE COURT: How would this witness know that, Mr. Andrews?

MR. ANDREWS: He is a back office man on Wall Street, your Honor.

THE COURT: He wouldn't know what other houses are doing.

MR.ANDREWS: I think he would. I think it is common knowledge on the street.

MS.HARRIS: Furthermore, what other houses are doing is not relevant.

MR. ANDREWS: It is not important.

I withdraw the question.

Q At least Lockwood was clearing through a bank at that time, isn't that so?

A Yes.

Q Will you tell the jury what it means for a brokerage house to clear through a bank?

A In what respect?

Q Let's say in respect to handling certificates of stock.

A They would receive and deliver for your account.

Q The bank would?

A Yes.

Q Therefore, when Lockwood & Company bouth a stock through another broker the bank would receive the stock, is that correct?

A Under your instructions.

Q The stock would go directly from the other broker to the bank under Lockwood's instructions, is that correct?

A Yes.

Q So that the certificate itself would never come into Lockwood & Company, isn't that true?

A True.

Q And in turn when Lockwood resold the certificate or resold the shares, your bank, again under your instructions, would deliver it out to the buyer, isn't that correct?

A Yes.

Q So you as a back office man, the men in the cage,

seldom if ever saw a certificate, isn't that true?

A Yes.

Q Your prime concern was reconciling the books, correct?

A Right.

Q And a trader in the trading room never saw a certificate, to your knowledge, isn't that true?

A Yes.

Q And thus the certificates of Stern-Haskell & Company --

THE COURT: He can testify as to what somebody else saw, is that what you are asking him, Mr. Andrews?

MR. ANDREWS: Based upon his knowledge of the firm. The Government hasn't objected. I assume they have no objection.

THE COURT: Well, the Court's duty is to see that proper questions are put to the witness.

MR. ANDREWS: I understand, your Honor.

THE COURT: The witness is here to testify as to what he knows of his own knowledge, not to make broad assumptions about matters of so-called common knowledge.

MR. ANDREWS: I stand corrected, your Honor.

Q As you have described, the stock certificates of Stern-Haskell Company traded by Lockwood & Company were

cleared through the bank, isn't that so?

A Yes.

Q You say that you were out of balance, your records were out of balance, by 100 shares of Stern-Haskell at some point in time?

A Yes.

Q That is not uncommon in your experience, is it?

A No.

Q In fact, it is very common to be out of balance in any given stock at any given time, isn't that so?

A True.

Q And your job is to reconcile the record, isn't that correct?

A Yes.

Q There is nothing extraordinary about having been out of balance 100 shares of Stern-Haskell, isn't that so?

A No.

Q Did you ever meet a fellow at Lockwood & Company called Phil Kaye?

A No. Not that I know of.

Q You have no recollection of ever having met such a fellow?

A No.

Q Lots of people used to come and go who were not

employees of Lockwood & Company, isn't that so?

A That's true.

Q Now, Sidney Stein had an account at Lockwood & Company, did he not?

A Yes.

Q That was his own account for his own stocks, is that true?

A What do you mean by his own account?

Q Well, the account was in the name of Sidney Stein, is that correct?

A Yes.

Q Was there ever, to your knowledge, any problem with that account-- that is to say, getting delivery of stock or getting paid for stock that was purchased for that account, the Sidney Stein account?

A Not that I know of.

Q You never had a problem as far as you knew, is that correct; always paid, always delivered, is that so?

A I don't know one way or the other.

Q But you have no knowledge of any time he did not pay for a stock he pruchased, or delivered a stock that he sold, is that correct?

A I don't know.

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THE COURT: Is the entire book being offered?

MR.WOHL: Yes, your Honor.

THE COURT: We will excuse the jury for a few moments.

The jury is excused.

(The jury leaves the courtroom)

THE COURT: You may be seated, Mr. Interpreter.

Mr. Wohl, would you take out every exhibit that you plan to show this witness and show it to the lawyers now?

MR.WOHL: Yes, your Honor.

THE COURT: How many such exhibits do you have, Mr. Wohl?

MR. WOHL: I will look at my list, your Honor.

MR. ROBSON: The major problem here, your Honor, is that we are getting a whole checkbook which seems to contain many, irrelevant entries and I have to go through

them to see if there is a problem.

THE COURT: Any problem like what?

MR. ROBSON: I don't know if there is prejudicial or irrelevant stuff or what and a lot of entries are in Yiddish, Hebrew.

I don't think Mr. Wohl needs all of these entries, but I don't know what the purpose is of introducing the entire book.

If he limits it to checks relating to this case, we have no problem.

THE COURT: I don't know how they can be isolated out. That is a very thick book.

MR. ROBSON: I don't know that anyone would object if there were photostats available for the jury to see --

THE COURT: How many check stubs in this book are you interested in, Mr. Wohl?

MR. WOHL: Your Honor, there are eight pages that refer specifically to the activities in question here.

We would submit, however, that --

THE COURT: When you say eight pages, are you talking about eight stubs?

MR. WOHL: My recollection, your Honor, is that each page refers to three or four actual check stubs and on some of the pages there's more than one entry that is in

issue here and on some of the pages there is only one entry.

It seems to me, your Honor, that the entries here refer either to harmless things, like telephone bills and things of that sort, or they refer to payments to other parties in this case.

The cross-examination of Mr. Stein was extremely broad on this question, going into the entire relationship between B'Noth Jerusalem and Mr. Stein and his associates who are on trial here.

The Government would submit that there couldn't be anything i nthe book that would be wholly irrelevant since if there were otherpayments to the defendants on trial here, then that would be relevant as going to this relationship that was developed on cross-examination of Mr. Stein.

If, on the other hand, there are not any other entries, then that would seem to be relevant too because it would tend to show the limitations of the payments between Mr. Stein or related organizations and the witness or the organization B'Noth Jerusalem.

THE COURT: You have the eight pages marked?

MR. WOHL: Yes, your Honor.

THE COURT: As to t..ose eight pages, we will have them photostated and use those in lieu of the original book,

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so the entire book doesn't have to go into evidence.

What you are interested in is eight pages, and even as to those eight pages, there may be some irrelevant matter, like a telephone bill?

MR. WOHL: That is correct, your Honor.

MR. FISCHETTI: May we know the eight pages, your Honor?

THE COURT: They are marked.

MR. FISCHETTI: Well, all right, Judge.

THE COURT: What is the next one?

MR. WOHL: Then there are checks that are related to those entries, checks of B'Noth Jerusalem, and I also have what appears to be a stock record of some sort prepared by B'Noth Jerusalem.

THE COURT: All right, show it to them and see if there is any objection.

MR.WOHL: Your Honor, perhaps as an explanation of some of the difficulty that has occurred, the Government made available the Stein folder of exhibits and the Weiss folder of exhibits at the same time, which was prior to the examination of Mr. Stein.

It appears that everyone was most interested in Mr. Stein at that point and, therefore, the lawyers examined the Stein folder but naturally did not examine the Weiss

folder at that time and after that time I did not make a specific point of going around and sort of re-offering the Weiss folder of exhibits to be examined.

THE COURT: Do you have any more than the three you have now pulled out, the checkbook, a check, and a stock record?

MR. WOHL: There is a group of checks, your Honor. There must be eight checks.

THE COURT: Are they one exhibit?

MR. WOHL: No, they are marked separately, your Honor.

THE COURT: And you handed those to the lawyers?

MR. WOHL: Yes, your Honor. They are clipped to the book which I have handed to the lawyers.

THE COURT: Mr. Higgins has them apparently.

MR. FISCHETTI: There are two sets of checks, Judge, Mr. Robson has one and--

THE COURT: There are two sets of checks?

MR.HIGGINS: There are ten checks that are marked for identification, your Honor.

THE COURT: There are ten checks, a checkbook and a two-page stock record; is that it, Mr. Wohl?

MR. WOHL: I have to count them up, your Honor. In addition, there are some checks that were

clipped to the book which I had anticiapted coming in, since I had anticipated the entire book coming in, and I will now have to unstaple them from the book and mark them separately.

THE COURT: Is that the way the record was kept?

MR. WOHL: Yes, your Honor.

MR. ROBSON: May I make a suggestion? I would not object to the entry of the book provided I had the right if it should develop at any point that something is irrelevant, request that something not be shown to the jury.

On the basis of a quick review, I don't see anything that would be a problem.

MR. ANDREWS: I object to the entry of the book. I would rather have identified in evidence what he is going to offer and then work with that.

THE COURT: Well, let's take the exhibits now one at a time.

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Q Did there come a time when you had a subsequent conversation?

A Yes, later that day I went with Mr. Wax up to a firm called Lockwood Securities, and there I met with Mr. Wax and with Mr. Levine.

Q Did you have a conversation on that occasion?

A Yes, we did.

Q Would you tell the Court and jury in substance what you said, what Mr. Wax said and what Mr. Levine said in that conversation?

A It was at that meeting that the name of the company came out, it was Stern-Haskell.

The description of the company was given to me by Mr. Levine. Very slight, small background on the company, where they were located, what business that they were in, and

I was asked if I could-- if I were able to bring any buying into the security and was told that if I were able to bring buying into the security, that I would be financially --

MR. ANDREWS: I would like him to identify, if he will, who said what, your Honor.

THE COURT: Let him finish the sentence and he can then do that.

MR. ANDREWS: There were two men present and he said he was told.

THE COURT: Mr. Andrews.

MR. ANDREWS: Yes, your Honor.

THE COURT: Finish the sentence.

A -- that I would be financially paid for my services if so rendered.

THE COURT: Can you tell us who said that?

THE WITNESS: I think it was Mr. Levine.

Q Do you recall anything else being said in that discussion?

A That basically I would be paid based on the number of shares of buying that did come in through my suggestion.

Q Were you told how much you would be paid?

A Yes. There was a formula of some sort. I don't recall what it was.

Q Do you remember any approximation of it at all?

A It was a certain number of cents per share.

Q Did you have any discussion about a prospectus at all?

A The only thing was, I remember asking for fairly up-to-date financial statements on the company.

As I remember, there was no --

MR. ANDREWS: Objection. The answer is not responsive to the question.

THE COURT: What was the question?

MR. WOHL: The question was, was there any discussion about a prospectus.

THE COURT: Was there any discussion about a prospectus?

A Yes, I asked if there was one, and I was told it was not a new issue, there was not a current prospectus out.

Q What did you respond to this proposal?

A Excuse me.

Q What did you respond to this proposal?

A I said it sounded interesting, and I thought I could be of assistance.

Q Did you thereafter recommend Stern-Haskell stock to anyone?

A Yes, I did.

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Q Did there come a time when you received some instructions from Mr. Levine?

A Yes.

Q When was that?

A Around the end of April 1969 or early May.

Q Do you remember exactly when it was?

A No, I don't.

Q What were those instructions?

A I was to go up to Mr. Stein's apartment and pick up some money and bring the money back down to Lockwood Securities.

Q And what did you do then?

A I did that.

Q Where was Mr. Stein's apartment located at that time?

A On East 72nd Street.

Q What happened when you got there?

A Mr. Stein asked me to come down to his bank vault with him, which I did, and took me into the bank vault with him and took out a box, opened the box, and took out a certain amount of money, and did some other things, and then we went back upstairs.

Q Before we go back upstairs, can you tell us what this box looked like?

A It was a safe deposit box.

Q How big was it?

A About 18 inches high, 12 inches wide.

Q How long?

A Two feet, maybe.

Q Did you see what was in there when Mr. Stein opened the box?

A Yes, I did.

Q What was in there?

A Bonds and cash.

Q Could you tell how much cash was in there?

A No, I couldn't.

Q Did Mr. Stein take something out of it?

A Yes.

Q What did he take?

A He took some cash out, put it in an envelope, and he took some coupons off some of the bonds.

Q Did you have any discussion at that time?

A Not -- no.

Q No discussion at all?

A Not that I recall.

Q Then what happened?

A We went back upstairs. Mr. Stein called Mr. Rubinson and I went into another room, I think a bedroom, with Mr. Rubinson, he counted out some of the money and put it in an envelope.

Q What happened then?

A I -- the envelope was given to me, I don't recall by--- whether it was Mr. Stein or Mr. Rubinson at that moment.

Q You mentioned Mr. Rubinson.

Had you ever met him before this occasion?

A I had seen him at that apartment once or twice.

Q How many times in total had you seen Mr. Rubinson?

A To this date?

Q Yes.

A Maybe five or six.

Q Would you look around the courtroom and see whether or not he is here today?

A Yes,he is.

Q Would you point to him, please, and -- well,just point to him where you are indicating.

A It would be the sixth seat from the left, the gentleman in the blue suit.

Q And what color tie?

A It looks maroon from here, and white polka dots.

MR. WOHL: May the record reflect the witness has correctly identified Mr. Rubinson, your Honor?

THE COURT: Yes.

Q What did you do with the money after Mr. Rubinson handed it to you?

MR. RUBINSON: Your Honor, he did not say Mr.Businson gave it to him, he said Mr. Stein gave it to him.

MR. WOHL: I am sorry. I think that may be correct, although I am not sure.

Q Can you tell us again how you received this envelope?

A I said that after Mr. Rubinson put the money in this envelope, we walked back out of the room.

I don't recall whether it was Mr. Rubinson or Mr. Stein, it was one of those two, though.

Q All right. Now that's clear.

After you received this envelope, can you tell us what you did with it?

A I put it in my valise, and went back down to Lockwood Securities and gave it to Mr. Levine.

Q And what happened then?

A Mr. Levine counted out part of the money, which he gave to me, andpart of the money he gave to Mr. Wax.

Q How much money was in the envelope?

A I don't recall. It was several thousand dollars.

Q Do you recall how many thousands it was?

A No, I don't.

Q Can you recall how much money you received from the envelope?

A Around $1500 or $2000.

Q Were there any other occasions when you received money in connection with Stern-Haskell stock?

A Yes, there was one .

Q And when did that occur?

A I think two weeks later.

Q Where did that occur?

A Again at Lockwood Securities.

Q Who was present at that time?

A Mr. Levine, Mr. Wax.

Q Was there any discussion at all about what the purpose of this meeting was?

A I don't recall.

Q What happened on that occasion?

A Mr. Levine gave me some bills.

Q Do you recall how many?

A No. It was less than the other time.

Q Did anything else happen at that time?

A I don't recall.

Q Did you have any discussion at all about what this money was for that you were receiving?

A Not that I remember, no.

* * *

* * *

Q It was not a matter of concern to you that you were facing 27 to 37 counts of crime, you never bothered to find out how many, is that so?

A I didn't say it wasn't a matter of concern. I just didn't count them. One was as bad as 27 to me.

Q You knew there were plenty, isn't that correct?

A I don't know. What is the term "plenty"?

Q You could be facing maybe hundreds of years in

prison. You knew that, didn't you?

A Possibly, yes.

Q My colleague tells me there are 13 counts against you in this case.

Does that make sense? Is that your recollection?

A I would have to read it to see.

Q What are you charged with basically in all of those indictments?

A I would have to read them all.

Q What kind of conduct are you charged with?

A If you can define the term "conduct" --

Q You are charged with having committed crimes in those indictments and you have pleaded guilty to two of those indictments, or various counts in two of those indictments.

What kind of conduct did they charge you with?

A I prefer to read them to answer them definitely.

Q Don't you recall what you did?

A Conspiracy.

Q Conspiracy to do what?

A To distribute securities.

Q And what else?

A Not disclosing cash payments made and received.

Q And what role did you play in those conspiracies?

A I received some cash payments, I picked up cash payments.

Q In each of these cases, in each of these three indictments, your role was to receive cash payments, is that correct?

A Yes.

Q And what were you to do for those cash payments?

A Either buy stock personally or recommend it.

Q To provide a market for stock, isn't that correct?

A In a way, yes.

Q To help stimulate buying for stock, isn't that correct?

A Stimulate or actually do it, yes.

Q To try to excite buying of stock, isn't that correct?

A To bring buying into the stock, yes.

Q Bring buying into the stock.

You would go to brokers that you knew, isn't that so?

A Yes.

Q And you would talk to them and try to get them interested in the stock, isn't that correct?

A Yes.

Q You worked with Hector Benante during that period

of time, didn't you?

A I met him once or twice.

Q Just once?

A Maybe twice. I don't recall.

Q Did you ever work with him on a stock?

A Not to my knowledge.

Q You didn't work together with him on the Kosher Kitchen stock?

A With him? No, I didn't.

Q Do you know what the crime of perjury is?

A Yes, I do.

Q Did Mr. Wohl tell you about perjury?

A I know about perjury.

Q You know about that on your own?

A Yes, I do.

Q Did you ever commit perjury before?

A Yes, I did.

Q Are you committing perjury today?

A No, I am not.

Q Did you commit perjury yesterday?

A No, I didn't.

Q You had to think about that for a minute?

A I try to think about everything.

Q Whether or not you committed perjury, you are not

sure?

A So that I can be truthful.

Q You have committed perjury before, is that correct?

A Excuse me?

Q You have committed perjury before, is that correct?

A Yes, I did.

Q Before today?

A Yes, I did.

Q You have knowingly lied under oath, is that correct?

A Yes, I have.

Q In testimony, is that correct?

A Yes.

Q In each of those cases you received cash payments for bringing buyers into different stock, isn't that so?

A Yes.

Q In the Stern-Haskell case, that is the oldest one with which you are charged, isn't that right?

A Yes.

Q That took place in 1969?

A Correct.

Q When did the other cases take place?

A I think early -- it was '70 or '71.

Q Could it be that one was in 1970 and one was in 1971?

A I don't recall.

Q I will show you the indictment. Will you look and tell me if it refreshes your recollection. You have one before you. Look at that one.

You are holding the Ladie Goldie indictment?

A Ladie Goldie was 1971, in March. And Park Avenue Knitting Mills was in December 1970.

Q All right. So in 1969 you were touting the stock of Stern-Haskell for money, isn't that so?

A Yes, sir.

Q In 1970, you were touting another stock for money, isn't that so?

A Yes.

Q What stock?

A In 1970 it was Park Avenue Knitting Mills.

Q And in 1971 you were touting the stock of Ladie Goldie for money, isn't that right?

A Yes.

Q Did you tout other stocks for money for which the Government didn't catch you?

A Yes.

Q How many others?

A Maybe one or two.

Q Is that all?

A Yes.

Q You mean you got cought for three out of five? How many were you touting for money?

A In total, counting these three?

Q Yes.

A When you say money, do you mean money or goods?

MR. CHESTER: I couldn't hear that answer, Judge.

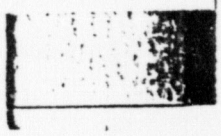
THE WITNESS: When you say money, you mean money for goods?

Q Things of value.

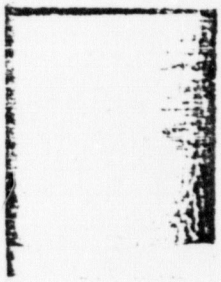
A To the best that I can recall, about seven.

Q About seven. During what period of time?

A Roughly from 1968 to 1971.



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Q When did you begin to tout the stock of Stern-Haskell?

A Roughly April-May of 1969.

Q What point of time in April?

A I would say the latter part.

Q When did you get paid for touting the stock of Stern-Haskell?

A At the end of May, the last week of May.

Q You said yesterday you got paid in early May. Which is correct?

A It was in May.

Q You don't know when in May?

A I can't remember.

Q Do you have any specific recollection of when you were paid?

A The exact date, no, I don't.

Q The approximate date when you were paid.

A May 1969.

Q The whole month of May now?

A Sometime in the month.

Q Yesterday you said you were paid between mid-April and early May. Have you changed that testimony?

A I am not changing the testimony, no.

Q All right.

Do you continue that testimony that you were paid between mid-April and early May? And I will show you at page 12 of yesterday's transcript, line 23 -- is that when you were paid?

A Yes.

To the best of my --

Q So you don't change yesterday's testimony?

A To the best of my recollection, I was paid end of April, early May.

Q All right. And you were paid for having touted the stock of Stern-Haskell to other people, is that correct?

A Yes, it is.

Q For having created buying in the stock of Stern-Haskell?

A Yes.

Q And who did the buying at your behest.

A Merit Investors and F. M. Mayer & Co.

Q By the way, you have lied about all this before under oath, haven't you?

A All this before? I can't say yes to that.

Q You can't.

Who are the people who voided your recommendation?

MR. WOHL: Objection. I don't believe the witness could testify as to what was in the minds of these other people. He can only testify as to who he recommended it to and what his conversations were.

THE COURT: Sustained.

Q Who did you get paid for recommending it to.

A Edwin Farber at Merit Securities and I think that was it.

Q What was this formula that was used to figure out how much you were to get?

A There was a formula and I stated before I don't recall what it was.

Q Do you know how many cents a share you were supposed to get?

A I don't recall.

Q You have no recollection whatever of what you were supposed to get?

A No, I don't.

* * *

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Q And he took you into his vault and you saw him count out the money, is that right?

A Yes.

Q You are very clear on this.

He didn't leave you outside in the anteroom, he took you right in and showed you the box?

A When you say he showed me the box, he opened the box in front of me and I looked in.

Q He certainly gave you an opportunity --

A He didn't say "Come here and look," but he did open it.

Q He opened it in front of you?

A Yes.

Q How much did you see him count out?

A I didn't count it with him but it seemed like several thousand dollars.

Q Was it $20,000?

A I don't think so.

Q Big bills or small bills?

A I think they were hundred dollar bills.

Q They weren't thousands, were they?

A No.

Q And he put them in an envelope?

A Yes.

Q What did he do with them then?

A He put them in an envelope.

Q How big was the envelope?

A I don't recall.

Q Was it a letter-size envelope, a big manila envelope?

A I don't recall.

Q You have no recollection of it whatever?

A No.

Q What did you do with it then?

A I didn't have it down there.

Q He didn't give it to you?

A Not down there, no.

Q And you say you took this money to Larry Levine, is that right?

A After I did receive it, yes.

Q You are sure he didn't tell you to wait outside this vault?

A Yes.

Q You are sure he took you in and showed it to you?

A Yes.

Q Then you made this so-called or alleged pay-off to Larry Levine after you got the money?

A I opened the envelope to Larry Levine.

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Q And you say Larry Levine counted out some of it and gave some to you?

A Yes.

Q Do you know how much he gave you?

A I think it was around $1500 or $2000.

Q Did you figure out how much you were entitled to based on the number of stocks, the number of shares had been sold at that time?

A I don't recall. I don't think so.

Q You didn't sit down and figure out how many shares had been bought on your recommendation to see how much money you were entitled to?

A I don't recall discussing it.

Q Did you do it? Did you sit down and figure out?

A Yes, possibly.

Q Whatever you received was what you were entitled to, is that correct?

A Yes.

Q By virtue of your arrangement --

MR. WOHL: I will object to the question and answer and move to strike whether what he received was he entitled to.

I would submit that that would call for a conclusion of the witness and he would not have any way of knowing

whether he was (a) really and truly entitled to it or (b) whether even under this illegal arrangement he was entitled to that much.

THE COURT: Overruled.

Q That was what you were entitled to get, the amount Mr. Levine allegedly gave you?

A I thought so, yes.

Q How did you know that?

A Based on the number of shares that I had been told by, I think Mr. Levine, that Merit Securities had bought.

Q Did you go to Mr. Widlitz and find out how many shares he had sold by early May?

A I don't recall doing that.

Q Did you go to the other man, the other broker and find out how many shares he sold by early May?

A I didn't go to him. I spoke to him on the phone.

Q Did he tell you how many shares he sold by early May?

A I think he did, yes.

Q So you wrote that number down and figured out how much you were entitled to get, is that correct?

A When you say early May --

Q You said early May; I didn't. I am repeating you. You said you got paid off in early May. you touted the stock

between April and early May.

MR. WOHL: I object to that, your Honor. I would submit first of all the witness had a differe - recollection this morning and, in addition, when he said originally, when he testified yesterday, he was asked the question when was that, he asnwered around the end of April 1969 or early May.

The next question, "Do you remember exactly when it was?"

And the naswer was "No, I don't."

Consequently I would submit it is improper for Mr. Andrews to continually harangue the witness claiming that he has testified that it was late April or early May with any degree of definiteness.

He said that on one occasion. Today he said I think a different time situation but he certainly testified that he does not remember exactly when it was.

Q Did you or did you not testify yesterday, "Did there come a time when you received some instructions from Mr. Levine?

"A Yes.

"Q When was that?

"A Around the end of April 1969 or early May."

Did you so testify regarding the instructions to

go to Stein and get money?

A Yes, I did.

Q And that money was for the stock that you had caused the purchase of by these brokers?

A Excuse me?

Q That money that you were to pick up from Stein was for the stock that you had caused to be purchased by these brokers?

A Yes.

Q Did somebody tell you in the interim that those brokers didn't buy any stock at all until the earliest, May 23rd, that the buying didn't even start until May 23rd?

Did somebody tell you last night?

A I looked at some sheets, photostat sheets of dates that various securities firms bought the stock. Those sheets show that Merit did buy the stock at the end of May.

Q So now you are changing your testimony a little bit to fit what you found in the sheets, is that right?

A I did not recall the exact date. This just reminded me.

Q When did you look at these sheets?

A Yesterday.

Q After you testified?

A Yes.

Q So therefore your testimony here could not have been truthful yesterday afternoon at five o'clock?

A It was truthful to the best of my recollection.

MR. WOHL: I object.

Right after he said "end of April or early May," the next question is, "Do you remember exaxtly when it was" and he answers, "No, I don't."

I don't think it is proper for Mr. Andrews to berate him with this claim that it was not truthful testimony.

THE COURT: Approach the bench,Mr. Andrews.

(At the side bar)

THE COURT: What kind of cross-examination do you call that? You read his testimony that he did not remember the date. Isn't that a fact?

MR.ANDREWS: I did.

THE COURT: Why are you saying his testimony yesterday could not be truthful when he says he didn't remember?

MR. ANDREWS: It sounds definite. I put it to him this morning, the same question, and said, "Is that when it happened?" And he said, "Yes."

I said, "Do you change that testimony?" And he said "No," end of April or early May.

* * *

BY MR. ANDREWS:

Q Mr. Kaye, you left the courtroom last night after you testified and you looked at some sheets, some records, is that right?

A Yes.

Q Did Mr. Wohl suggest that you look at those records?

A I don't remember if he suggested or if I asked to look at them.

Q Did Mr. Schatz suggest you look at them?

A No

Q This was only last night.

How did it come about that you looked at records after you testified?

A Just to pinpoint a date.

Q Why did you want to pinpoint a date?

A When the person or people that I recommended the stock to actually started buying so in my own mind I would know chronologically how everything happened.

Q And then you realized after you looked at the sheets that if you had been paid in April or early May you were being paid for having done nothing, is that right?

A Could you ask that one again, please?

Q You realized after you looked at those sheets if you were being paid in April or early May you were being paid for doing nothing, isn't that right?

A That would have been the case.

Q If you were being paid for F. M. Mayer and Widlitz, you would be paid for doing nothing, is that right?

MR. WOHL: Objection.

There is no testimony that he was being paid for Widlitz or F. M. Mayer.

MR. ANDREWS: He testified that the stock he sold was sold through F. M. Mayer and Widlitz and that is what he was paid for.

MR. WOHL: I don't believe that is his testimony.

THE COURT: Proceed.

Q You were paid in the early part of May, weren't you?

A As it turns out after looking at the sheets last night I was paid at the end of May.

Q You were paid in the early part of May.

Your recollection yesterday was correct, wasn't it?

MR. WOHL: I object to this, your Honor.

Yesterday there were two questions and answers and it is clear by now that the second was, "Do you remember exactly when it was?" And he said, "No, I don't."

I don't think it is proper for Mr. Andrews to continue to ask questions implying that the witness said yesterday that he remembered exactly when it was.

Q You did say yesterday that you sold the stock or you touted the stock to Mr. Widlitz, did you not?

MR. WOHL: I object to that.

Is he saying he sold the stock or he touted the stock?

MR. ANDREWS: Touted the stock to Mr. Widlitz.

Q Did you not?

A I and others told Mr. Widlitz about the stock and to buy it.

Q What others?

A I don't recall exactly but there was a meeting at Schrafft's where I was present, where Mr. Benante was present, one of the few times I met him, and Mr. Widlitz was present, Mr. Wax was present and I don't recall who else was there.

Q Mr. Benante was there?

A Yes.

* * *

(Recess: Time noted: 11:00 a.m.)

(Jury present, time noted: 11:20 a.m.)

MR. ANDREWS: May I continue, your Honor?

THE COURT: Yes.

BY MR. ANDREWS:

Q Mr. Kaye, before you went in front of the officer of the Securities and Exchange Commission and testified under oath about Stern-Haskell, did you tell your lawyer, "I took a payoff in that case to tout the stock"?

A I don't recall, but I don't think so.

Q Did you tell him, "I took a payoff. Go make a deal for me so that maybe I won't have to go to jail, let me testify against Sidney Stein"?

A Would you ask that again?

Q Did you tell yoru lawyer that --

MR. WOHL: Objection.

A Would you ask that again?

Q Did you tell your lawyer, "Make a deal for me so I won't have to go to jail, let me testify against Sidney Stein" --

MR. WOHL: Objection. There is no basis whatever for any apparent claim being made by Mr. Andrews at this time.

MR. ANDREWS: It is not an apparent claim. The

witness testified he got a payoff, went to the vault and got the money.

There is no apparent claim, unless your case is apparent, to which I will agree.

THE COURT: You are asking did he tell his lawyer that?

MR.ANDREWS: Yes, and asked his lawyer to make a deal for him before he went to the SEC.

THE COURT: Your answer is what?

A No, I didn't.

Q You didn't tell your lawyer you had taken a payoff for touting the stock of Stern-Haskell?

A As I said, I don't recall telling him.

I don't think I did tell him.

Q You think you did not tell him?

A Correct.

Q At that time you didn't have these other indictments against you, is that correct?

A Yes.

Q At the time you had not even done the Lady Goldie, whatever it is, deal, had you, in March 1970?

A I don't think so, right.

Q At that time you had not even done the Park Avenue Knitting Mills deal?

A I had not.

Q You had not even started to do those crimes, is that correct?

A That is correct.

Q So you testified at page 28, in the following fashion, did you not:

"Q Did Mr. Wax tell you anything about Mr. Stein?

"A No.

"Q Did he say he knew Mr. Stein?

"A He said that he had the money to be able to do the financing, yes."

Is that your testimony?

A I guess so, yes, sir.

Q And you were referring to the financing of your mining enterprise, is that correct?

A Yes.

Q Your Lark Enterprises?

A Yes.

Q And you told that Securities and Exchange Commission official, under oath, that Mr. Wax had suggested maybe Sidney Stein can give you some financing for your company, is that correct?

A I don't recall, but if it is there, yes.

Q Is that your recollection?

A I don't recall the conversation three years ago.

* * *

Q What happened in the interim to cause you to change your testimony? What happened between March of 1970 and the day you showed up in this courtroom to make you change your testimony?

A After being indicted two times I decided I wanted

to tell the truth and have everything out in the open.

Q After being indicted twice and after Sidney Stein implicated you in the Stern-Haskell case, you decided to change your testimony, is that correct? When you were brought in to Mr.Wohl's office, didn't he say to you it is apparent to me that you took pay-offs, isn't that what he said?

A No.

Q Didn't he say to you it is apparent to me further that you paid it over to somebody else, isn't that what he said?

A No.

MR. WOHL: Objection. Mr. Andrews is again asking these questions he doesn't want the witness to answer. He wants to put --

MR. ANDREWS: I want answers.

MR. WOHL: I submit if he wants to get the answers he has enough sense to know that in order to get the answers he has to stop asking questions to allow the witness to answer.

MR. ANDREWS: I think he answered both. He said both no.

A No, I didn't. I wanted you to ask them one at a time so I could answer them properly.

Q Isn't it a fact when you were called in to the United States Attorney's office at the beginning of last year in January or February, Mr. Wohl said to you it is apparent to me that you took pay-offs in this case and Sidney Stein said so? Isn't that what happened?

A I don't recall him talking about it then. I brought up the subject months before.

Q You testified in the grand jury.

THE COURT: Let him finish his answer, Mr. Andrews, before you go on to the next question.

MR. ANDREWS: His voice is so low that I think he is finished.

THE COURT: No, indeed. You have cut him off before. It is not because his voice is low. It is because that is the way you ask questions. You cut the witness of repeatedly.

MR. ANDREWS: Sorry, Judge.

THE COURT: Do you want him to answer that question, if so, give him an opportunity.

MR. ANDREWS: I would not have asked it if I did not want it answered.

THE COURT: Well then slow down.

A May I hear the question again.

(Question read.)

A My answer is correct.

Q You testified in the grand jury on February 8 --

THE COURT: You say your answer is correct. What answer?

(Answer read.)

A That is true.

Q You testified in the grand jury on February 28, 1974, is that your recollection?

A Yes.

Q How is it you remember that date so specifically?

A I don't remember the date. Approximately a few months ago.

Q 1974, approximately a few months ago?

A I don't remember the time.

Q Nevertheless you testified in the grand jury?

A Yes, I did.

Q The early part of 1974, isn't that correct?

A I don't remember when but I did testify before the grand jury.

Q I show you your transcript. Will it refresh your recollection, and I direct your attention to the date which appears at the heading.

A February 28, 1974.

Q Prior to your testifying in the grand jury, you

had a discussion with Mr. Wohl regarding your involvement in Stern-Haskell, did you not?

A Yes, I did.

Q And I put it to you, did Mr. Wohl say in substance it is apparent to me that you took pay-offs in the Stern-Haskell case.

A I don't recall him saying that. I told him I did.

Q Didn't he tell you that if you didn't come in here and admit it you would spend years in prison?

A No, he didn't.

Q Is it a fact that when you testified in the grand jury you responded to some 53 questions, all except one with the answer, "Yes," or "true," is that a fact?

MR. WOHL: I object, your Honor. If Mr. Andrews is claiming that the witness said anything that is different in the grand jury, he should put the specific question and the specific answer.

THE COURT: He said that at least four times.

MR. ANDREWS: The witness didn't say anything in the grand jury except on 43 occasions yes or true.

THE COURT: Mr. Andrews, that is an improper question to the witness. You put a question to him and ask him if he was asked that question and did he give

that answer in the grand jury. Put a specific question to him.

MR. ANDREWS: I am not permitted to establish that he was in there as a puppet, a Charlie McCarthy of Mr. Wohl, that Mr. Wohl --

THE COURT: Mr. Andrews, I don't want a lecture from you. Put a question to the witness.

Q Do you recall having made one single narrative answer in the grand jury?

MR. WOHL: I object to that, your Honor.

THE COURT: That is the same thing, Mr. Andrews.

MR. ANDREWS: May I offer his grand jury testimony in evidence, your Honor?

I think it is probative of the question of whether or not this witness is telling the truth, whether or not he was able at that time to narrate his testimony without prompting or leading by the United States Government and let the jury decide.

THE COURT: Do you have some legal basis for that?

MR. ANDREWS: It is probative of the issue of this man's credibility and believeability. That as far as I am concerned and as far as I know is the only basis for the admission of evidence.

THE COURT: For admitting prior inconsistent statements?

MR. ANDREWS: No, your Honor. It is probative of this man's credibility for another reason:

Back in this day, he was not permitted to tell his story. He was put 50 some odd questions to which the answers were "Yes," and this is a proper question for the jury to consider on whether or not this man is worthy of belief.

THE COURT: The way to do it is to put to the witness a question which is inconsistent with his testimony here and ask him, "Were you asked that question and did you give that answer."

That is the way to get that before the jury and that is the way it is always done in every criminal case.

MR. ANDREWS: I am not trying to establish an inconsistent statement, your Honor. This could not help but be consistent because he didn't testify --

THE COURT: That is the only thing you are permitted to do by the rules of evidence with that.

MR. ANDREWS: May it be marked for identification, your Honor?

THE COURT: I thought it was already marked?

MR. WOHL: It has an identification number on it.

MR. ANDREWS: 3771, your Honor.

Q Was the grand jury informed, to your knowledge, of your criminal record and the fact that at that time you had two indictments hanging over your head?

MR. WOHL: I object to this, your Honor. First of all, the witness has no way of knowing what the grand jury was informed and the question here is the trial issues and the witness is here testifying at trial. I am sure Mr. Andrews would love to go off and investigate grand jury procedures and embark on a totally irrelevant activity, but whether the grand jury was told something or not is irrelevant.

THE COURT: Yes, objection sustained.

Q Did you tell the grand jury with your prior criminal involvement and about the indictments that were handing over your head when you answered "Yes."?

MR. WOHL: I object to that as well, your Honor.

THE COURT: Sustained.

* * *

CROSS EXAMINATION

BY MR. CHESTER:

* * *

Q This money that you allegedly received when

you went down to the vault, you said, as I recall it, looked like a couple of thousands that was put into the envelope?

A I think I said several thousand.

Q What does several thousand mean to you?

A Between five and eight thousand, five, six, seven, eight thousand.

Q And you got $2,000 of it?

A $1,500 or $2,000, I don't remember.

Q Did you put that down on your income tax?

A No, I didn't.

Q Between last night, when you testified that you went and looked at the pink sheets so you could identify more accurately the time that the stock was sold, the Stern-Haskell stock was sold -- is that correct?

A No.

Q How did you find the date?

A They weren't pink sheets. There was a ledger of recordings of trade dates, I guess from Lockwood, showing it by dates and sale dates by various brokerage firms.

Q It was your testimony that even as long ago as last night you couldn't remember whether Wohl asked you to look at it or you asked Wohl whether you should look at it?

You mean to tell me in one night you forgot

things?

A No, I said Mr. Wohl took it, put it on the other side, of the desk, away from his side, then the phone rang, he picked up the phone and I walked over and looked at it just to see the dates.

Q He didn't point it to you, you just accidentally ran into it?

A I didn't accidentally run into it. He put it there and I looked at it.

Q You have never seen me before?

A I don't think so.

Q Have I ever given you any money?

A No.

Q Have you ever given me any money?

A No.

* * *

Q The alleged commissions, payoffs, briberies or whatever we are here for that somehow Sidney Stein gave you, did you put those in the bank?

A Number one--

Q In 1969.

A Mr. Levine gave it to me, not Mr. Stein. I picked up an envelope that I bought to Levine and he gave me certain dollars from that envelope.

Q How much?

A I said $1500 to $2000.

Q What did you do with that money?

A I don't recall but I know I did not deposit it to a checking or savings account.

Q The second payoff, the second alleged payoff, how much money was that?

A I don't recall. There were several bills, hundred dollar bills, but I don't recall how much it was.

Q Did you put that in the bank?

A No, I didn't.

Q Are you under the care of a psychiatrist?

A No, I am not.

Q Mr. Andrews asked about Mr. Wax and Levine.

Do you give a damn or not whether I go to jail as long as you sit here and go free after three indictments and tell this story you told to the jury?

MR.WOHL: Objection.

THE COURT: Sustained.

Q Do you care whether or not I go to jail?

A Yes.

Q You do? Who would you rather see go to jail; me or you?

MR. WOHL: Objection.

THE COURT: Mr. Chester, the witness is here to testify as to certain facts.

Q Let me ask you this:

After you became honest about a year and a half later after testifying before the SEC, the first person you told about being a perjurer and a liar before the SEC was some type of new attorney, am I right?

A Can I hear the question again?

Q You became honest about a year and a half after March 1970, after you had been indicted twice, and you wanted to get it off your soul so you went to an attorney and told him that you had been a perjurer in 1970, is that correct?

A I didn't recall the SEC testimony when I met with my attorney.

Q You had forgotten that.

You didn't know you were a perjurer in 1970, a year and a half later you forgot all the lies you told?

A In 1970, was that the date--

Q That is the date.

A -- of the SEC hearing?

Q Of the SEC hearing, yes.

A When I met with my attorney-- about a year and a half, a year and a quarter -- I had forgotten.

Q You forgot all the lies you told to the SEC?

A I forget my complete statement. I forgot being up there.

Q What were you worried about? What did you go to the lawyer about, the two indictments staring you in the face?

A Yes.

Q Did you ask him to go to the Government and try to make a deal?

A No.

Q When did you remember about this alleged money that these people gave you?

You didn't remember in 1970, 1971.

When did you first remember the money that you supposedly gave these people?

MR. WOHL: I object again.

Again Mr. Chester's commentary is flatly false. It has never been suggested that the witness ever forgot about the payments.

THE COURT: Yes.

You asked him that and he said he never forgot about it.

You are asking him the same question again.

Q Who is the first person, even though you never forgot about it, who is the first person you ever told about it and when?

That's two questions.

When is the first person you ever told about these fabulous payoffs?

A Any specific time?

Q A year.

A My attorney probably.

Q You don't remember?

A I said my attorney.

Q You mean to tell me-- is Mr. Wohl the first man you told?

A I said my attorney.

Q You told your attorney?

A Yes.

Q What is your attorney's name?

A Charles Stillman.

Q And you told him about the payoffs?

A I told him about the whole episode in Stern-Haskell and every other case.

Q And the other two indictments?

A Of course. He had been my attorney.

Q Is he still your attorney?

A Yes, he is.

Q He is the one who cut the deal with the Government for you?

A I don't know what he did.

Q You don't know what your own attorney did?

A I know that I agreed originally through my attorney to come in and plead guilty on two of the indictments.

Q Let me ask you this:

Q Would you waive your attorney-client privilege and let me call your attorney into court and question him about what you told him?

A I don't know my legal rights about that.

MR. ANDREWS: May we ask the Court to instruct him now that he has a right to do that very thing.

Q You want to get at the truth, don't you?

THE COURT: I don't know what you are getting at.

MR. CHESTER: I want to subpoena his attorney

THE COURT: To ask him about what?

MR. CHESTER: Will he waive his rights to his attorney so I can subpoena his attorney and find out whether in fact he told his attorney about these alleged payoffs when he became honest after three indictments.

THE COURT: He testified that he did tell his attorney.

You now want his attorney called?

MR. CHESTER: I am asking him will he waive his rights and let me subpoena his attorney.

THE COURT: Anything that you said to your attorney is protected by the attorney-client privilege. The attorney may not disclose it unless you waive that protection, waive that right not to have it disclosed.

Do you understand?

* * *

Q Do you waive that privilege?

A Yes, I do.

Q What is your attorney's name?

A Charles Stillman.

Q When is the last time you talked to him?

A Three weeks ago. Two weeks ago.

Q How many times did you talk to Mr. Wohl?

A Since we have met?

Q Since you and I have met?

A Since he and I have met?

Q Yes, since you and Mr. Wohl have met.

A Six or seven.

Q Six or seven times?

A Five or six.

Q And you hired an attorney about a year and a half after 1970 at your SEC testimony, Mr. Stillman, after your three indictments?

MR. WOHL: I am sorry to interrupt Mr. Chester. I wanted to make one thing clear. I was not sure whether it was on the record. It appeared to me that Mr. Andrews and Mr. Grimes were also asking Mr. Chester to request this waive of the attorney-client privilege.

MR. ANDREWS: I am a little bit annoyed now about Mr. Wohl's putting his deductions like Sherlock Holmes on

this record. I have a right to confer with Mr. Chester in preparation of the defense and the circumstance places me so close that eagle ears can pick up our discussion. I do object to his putting on the record the product of the discussion which he overhears because I can't get far enough away from him. I think it is improper.

MR. WOHL: It is not improper.

MR. ANDREWS: Why are you putting it on the record for then? This is some kind of tactic and I object.

MR. WOHL: I would like the record clear as to whether Mr. Andrews on behalf of Wax and Levine is joining in this request that we --

MR. CHESTER: All the defendants will join.

MR. ANDREWS: How dare he get up and do this kind of thing? Is he trying to force me into the position of joining in the request and commit myself and withdraw and be embarrassed?

THE COURT: Approach the bench, Mr. Andrews.

(At the side bar.)

THE COURT: What has happened is that you and Mr. Grimes have been giving Mr. Chester questions and advice as he goes along, which puts you, in my view, in the position of representing Mr. Chester.

MR. ANDREWS: Absolutely wrong with due respects.

Mr. Chester is an extraordinarily competent attorney.

THE COURT: You have been giving questions to Mr. Chester right now in the presence of the jury and it is my view that it puts you, Mr. Andrews, in the position of also not only representing Mr. Levine and Wax in this proceeding, but representing Mr. Chester.

MR. ANDREWS: I will say for the record that is not true. I am an officer of the Court. I do not represent Mr. Chester. To the extent we do have common interest, I will aid him in any way possible because it aids me in my defense. I have assisted many attorneys. I have handed questions to almost every attorney who appears at the lecturn.

It's been my practice to do that through my career as a prosecutor and an attorney to help each other. I am not representing Mr. Chester. I could not have done half the job he does for himself. That is the fact.

MR. CHESTER: The Court allowed us to communicate between attorneys.

THE COURT: Not when you are up there asking questions. You are making it appear before the jury that you are also representing Mr. Chester. You can confer with him and you are supposed to confer with him out of the pre-

sence of the jury and not get up there and act as his attorney and that is precisely what you are doing.

MR. ANDREWS: Even tactically --

THE COURT: Nobody is preventing you from having a joint defense here.

MR. ANDREWS: Even if I was representing Mr. Chester, which I am not, that is certainly not a fact that I would not want the jury to know. It defines common sense that I would want to represent him sub rosa. I don't want them to get that impression.

THE COURT: What impression do you think they get when they see you and Mr. Grimes stopping him when he is questioning and telling him what to say.

MR. ANDREWS: I don't stop him. When there is a hiatus I hand him a note. Two notes were passed up to me during my cross examination.

THE COURT: I didn't see that. All I saw was you and Mr. Grimes telling him what to say and what to do.

MR. ANDREWS: Two valuable questions which had escaped me were handed up by other counsel during my cross. In a case like this where the Government has prepared it for five years, we attorneys have a right to help each other when our interests were consistent and we do that.

THE COURT: First of all, Mr. Chester's defense

and your client's defense are not consistent. You don't have any right to represent Mr. Chester.

MR. ANDREWS: I don't represent him.

THE COURT: That is what you are trying to do.

MR. ANDREWS: That is not true.

THE COURT: His defense is not consistent with your client's defense.

MR. ANDREWS: He got on to the question of this guy's discussion with Mr. Stein. It washis decision to do that. I happen to think he lied to his own lawyer.

Stillman wouldn't talk to me because of privilege.

THE COURT: That is why you gave Chester a note to get back at him and get him on the stand. Mr. Chester never thought of it.

MR. ANDREWS: He didn't? He brought it out first.

THE COURT: You did. I saw the note before he asked the question.

MR. ANDREWS: The note was about he just sold his house for $100,000. I never gave him a note about Stillman. I said press it on Stillman because I don't think he told the truth to his lawyer. He hit it first and he gets up to make some kind of innuendo.

MR. WOHL: I heard specifically either Mr. Grimes

or Mr. Andrews ask Mr. Chester to find out the name of the lawyer that represented Mr. Kaye and also specifically to ask the witness whether he would waive the attorney-client privilege. I specifically heard him ask that.

THE COURT: Because he, Mr. Andrews, did not want to do it, is that right? Is that so?

MR. ANDREWS: It didn't occur to me on cross although I have my opinion during this case that he lied to his lawyer. I have that opinion based on his plea before your Honor wherein he never brought out his making pay-offs over again. I knew that. I decided not to ask.

Chester got on the line of questioning. I know who his lawyer is. I don't have to find out from Chester who his lawyer is. I said press it, see if he will waive the privilege. Chester opened the whole line of questioning. I didn't do it.

MR. CHESTER: I was trying to find out who he first told.

MR. ANDREWS: My first question was a letter to his lawyer. I went into it.

THE COURT: Why didn't you ask him to waive his privilege then?

MR. ANDREWS: Because it was not apropos to my line of questioning and I forgot it.

THE COURT: The problem with this trial, as I have said before, is lawyers have attempted to represent other clients here, other defendants here and that is not permitted particularly when you haven't been hired by Mr. Chester to represent him, number one.

Secondly, when his defense and your client's defense may be inconsistent, that is a violation of your professional responsibilities. You cannot represent Mr. Chester and that is what you are doing before this jury. You can confer with Mr. Chester and you do it out of the presence of the jury.

MR. ANDREWS: Can I ask for a recess when it is appropriate to do so?

THE COURT: No, because every five minutes I am going to be getting a recess from you. You do it on the regular recess.

MR. CHESTER: That man is not telling me what to do.

THE COURT: He is telling you what to do and I sat here and watched you.

MR. CHESTER: Yes, he gave me a paper.

THE COURT: You are not to help each other in the manner that has been done in the presence of the jury.

MR. GRIMES: On several occasions when an attorney

other than Mr. Chester is up here I would dig out pages either in some previous transcript and I would point to them in order to save time. I have done that on several occasions and my reasoning because I wanted to make sure there wasn't any delay. I know that each attorney has a two-hour limitation and I was trying to speed things along.

MR. ANDREWS: Not to save time, this shows you we do not get together before trial. Some other lawyers come up with ideas we have not considered before.

THE COURT: Are you going to talk when I am talking?

MR. ANDREWS: No.

THE COURT: We are not talking about other situations. We are talking about this situation now. It obviously involves an attempt by Mr. Andrews to get back to a lawyer who would not cooperate with him and let his client speak with Mr. Andrews.

MR. ANDREWS: That is not true. Any action I ever had with Stillman has been friendly. I think he is a very damned decent guy.

THE COURT: And you wanted to put Mr. Chester up to subpoenaing him here rather than you.

MR. ANDREWS: That is not true at all. This is what Mr. Wohl tried to make it look like. All I need now

is a phone call and I will call Mr. Stillman tonight. I don't want to subpoena him. The point is if he does not show up --

THE COURT: How can Mr. Stillman answer your question unless his client waived it?

MR. ANDREWS: He waived it in open court on the record before you. I can call him now and represent to him as an attorney, no doubt he will check with his client and call me back. I will ask him. If my suspicions are accurate Mr. Stillman will appear here as a witness. If they are not we won't hear about it any more.

MR. WOHL: I don't think that is the case. The record should be clear that Mr. Levine and Wax of course have joined in the request.

MR. ANDREWS: Why should that be clear in the record?

THE COURT: Why shouldn't it be clear in the record?

MR. ANDREWS: How do you know it happened? I call on you.

MR. WOHL: I heard it happen.

MR. ANDREWS: Why did you hear it happen? Because you are overhearing conversations among the defense attorneys and why are you listening --

THE COURT: If Mr. Wohl can hear it the jury is listening.

MR. ANDREWS: Maybe they are not paying attention. I am speaking to him as quietly as I can.

THE COURT: You are not. That's another thing.

MR. ANDREWS: I am trying to, Judge.

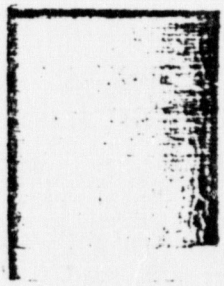
THE COURT: You are right next to the jury so if the jury can hear you Mr. Wohl can hear you.

MR. ANDREWS: Mr. Wohl leans back in his chair and he is close to us.

THE COURT: Let's get on with the cross examination.

(In open court.)

* * *



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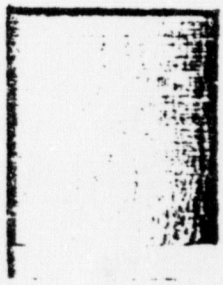
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MR. ANDREWS: Your Honor, I have a document I would like to give to Mr. Chester.

May I be permitted to do so?

THE COURT: No.

* * *



Q When you went before the grand jury on February 28, 1974, it was very short, only ten pages, and the first two pages were swearing you in.

Would you look at that?

(Handing)

That ten pages before the grand jury, and I counted out that there were fifty questions and the most you ever said is "Yes,"; "Yes, I do" --

THE COURT: I have already sustained the objection to that question put by Mr. Andrews.

It is now sustained as to you.

MR. CHESTER: This is very important because it shows this man never testified, he was just a poll-parrot --

THE COURT: Mr. Andrews already said it and I ruled it out and now you are saying it again, Mr.Chester.

MR. CHESTER: It is very important.

THE COURT: We will recess now until two o'clock for lunch.

The jury is excused.

(The jury left the courtroom)

THE COURT: The witness is excused until two o'clock.

(The witness left the courtroom)

MR. ANDREWS: May I make an application on this point, the point you just ruled on, with Mr. Chester?

THE COURT: Should the witness stay for this?

MR. ANDREWS: No, I don't need him for this, your Honor.

I deem this incident in the grand jury to have been of such overwhelming importance as to the credibility of this witness that I should like to have leave to submit a memorandum of law if we determine we can find appropriate law to support our position, and ask your Honor to reconsider your ruling at that time.

THE COURT: Is there any other attorney who wants to cross-examine Mr. Kaye?

MR.KEEGAN: I might put two or three questions to him after lunch, no more than five minutes.

THE COURT: Anyone else?

MR. HIGGINS: I think we may, your Honor, briefly.

THE COURT: Mr. Chester, your time is up and after lunch we will ask about ten more minutes of cross-examination by Mr. Keegan and Mr. Higgins.

MR.CHESTER: We didn't start until ten and I got two hours--

THE COURT: No, not on this.

Is there any testimony given by this witness

against you, Mr. Chester?

MR. CHESTER: Judge --

THE COURT: I asked you a question. Was there any testimony given --

MR. CHESTER: Yes, under count 1, conspiracy, if the jury believes that this man gave money to these people, I will be convicted even though I don't even know these people, and I have to prove he is a liar and I have a lot more questions to ask.

THE COURT: Your cross-examination is reduced at this point to one hour because this particular witness gave no specific testimony against you and the Court's ruling is that you have now cross-examined him for-- you started at 11:52 and ended at 12:49. You have had sufficient time in view of that to cross-examine this witness and, therefore, your time is up.

When we come back, Mr.Higgins and Mr. Keegan will be allowed five minutes.

We will recess now for lunch.

(Luncheon recess: time noted: 12:48 p.m.)

* * *

MR. ANDREWS: I have some questions, your Honor.

THE COURT: Please approach the bench.

(At the side bar)

THE COURT: I have two matters only that have been testified to by this witness for the first time on his redirect.

The first is about a party in Connecticut at which he may have been introduced to Mr. Benante, by either Mr. Wax or Mr. Levine.

The second is his meeting with Mr. Wohl in his office, at which time Mr. Wohl brought out that the witness was the one who for the first time mentioned a payoff and mentioned the name Wax and Levine.

Now, you can inquire as to those two matters. Everything else was testified to previously by this witness.

MR. ANDREWS: He expanded a great deal of his

other testimony, like the Schrafft's meeting --

THE COURT: That is all you are going to cross on--

MR. CHESTER: And the promises. He o9pened that all up again.

THE COURT: That was all gone into on cross-examination.

MR. ANDREWS: And he went back into it, your Honor.

THE COURT: The new matter is the only thing you are going to recross him on, and I am not going to hear any argument on it.

Let's get on with this case.

(In open court)

RECROSS-EXAMINATION

BY MR. ANDREWS:

Q Mr. Kaye, do you believe and is it your understanding that if you were to sit up there now on that stand and testify that Wax and Levine didn't get any money, that Benante and I split up the money --

THE COURT: Approach the bench, Mr. Andrews.

(At the side bar)

THE COURT: Mr.Andrews, I just told you there are only two subjects you can go into on this recross, didn't I?

What was the first one?

MR. ANDREWS: Something about a party in Connecticut.

THE COURT: What was the second one?

The meeting in Mr. Wohl's office in which this witness said that he was the one who first mentioned payoffs.

MR. ANDREWS: That is where I am going now, your Honor. My next thought was going to be the way he changed his testimony from yesterday to today. This is related to the meeting at Wohl's office.

THE COURT: How is it releated? What were you going to ask him?

MR. ANDREWS: If he were to take the stand and

testify that he didn't get money-- that he didn't give money to Wax and Levine but that he kept the money and he got it for putting Wax and Levine and these other two people, Farber and Widlitz, into the stock, that he would get the indictment dismissed, and then I'm leading next into the meeting --

THE COURT: Read that question, Mr. Reporter.

MR. ANDREWS: If he were to say "I didn't give money to Wax and Levine and I got it all for putting them in, would you get your indictment dismissed," and the next question is "Who brought it out first at Mr. Wohl's office; did he tell you who got paid or did you tell him who got paid?"

THE COURT: Whatever that garbled question is that you just put on the record, you are not going to ask him.

You ask him about that meeting in Mr. Wohl's office and you ask him about that meeting in Connecticut.

MR. ANDREWS: I am not interested in the meeting in Connecticut, Judge.

THE COURT: Just ask him about the meeting in Mr. Wohl's office and don't ask that garbled question about--

MR. ANDREWS: Judge, he says--

THE COURT: We are not going back into --

MR. ANDREWS: This man is the only one that convicts my clients of a crime, Judge. If I say to him, "Are you sure now that you are the one who brought it out first," and he says, "Yes," and I sit down, my clients go to jail.

I have to have some little latitude around that meeting, Judge. This is not a mechanical procedure. The skill of an attorney has to be given some leeway to cross-examine a witness and I am going to talk about the meeting at Wohl's office and who brought these things out first.

THE COURT: That is all you are going to talk about. That other question is getting back into his motive for testifying for the Government, and that is out,because we have gone over that.

MR. ANDREWS: That was a preliminary to the meeting at Wohl's office.

THE COURT: No. That is going to his motive for testifying for the Government and you have exhausted that on cross and I am limiting you now to those two subjects.

Do not ask that question --

Mr. ANDREWS: I feel absolutely impotent as an attorney and I can't defend my clients under these circumstances.

THE COURT: You did an excellent job on cross-examination, you went over and over and over --

MR. ANDREWS: I am not going to take three minutes on my whole recross --

THE COURT: If you ask that question, I will hold you in contempt of court for deliberately disobeying my order.

Do you understand that?

MR. ANDREWS: I understand it too well, your Honor.

THE COURT: There is only one judge here and I am running this trial and you don't have the right to overrule me and defy my orders, as you have constantly done.

MR. ANDREWS: Judge, this is the only serious witness against my clients and I need three more minutes to ask --

THE COURT: You are not going to ask that question. If you have a question I can understand, you can write out, that doesn't go to the motive business--

MR. ANDREWS: This is why I must do it this way. I want to say to him, "If you didn't say here you split the money with these two guys, do you think for a minute they would dismiss the other indictment," and if he says, "Yes," then I will say, "You went to Wohl's office and brought it out," the same way he found a thing on the desk last night to make him change his testimony today --

THE COURT: You are going to ask him if they

won't dismiss the indictment unless he says that?

MR. ANDREWS: If he came in and he said, "I kept the money and Wax and Levine got none of it," they won't dismiss that other indictment, not in a million years.

THE COURT: You are not going to ask that question.

(In open court)

MR. ANDREWS: I move to strike out the redirect testimony and ask the jury to disregard it.

THE COURT: The motion is denied.

BY MR. ANDREWS:

Q When youwent to Mr. Wohl's office and you brought out and volunteered all of this information, there wasn't a piece of paper on the desk, in your view, saying "Kaye split the money with Wax and Levine"; was there, like the piece of paper you found on the desk last night about dates?

A I didn't see one.

Q You didn't see one at that time?

A No.

Q Isn't it true that you were paid by Mr. Stein, you and Hector Benante, were paid by Mr. Stein, to put Farber, Widlitz, Wax, Levine and other brokers in the stock?

A Could you ask that question again, please?

Q Isn't it true that you were paid by Mr. Stein to put Farber, Widlitz, Wax, Levine and other brokers into this stock?

A No.

Q Did you pay Widlitz?

A Possibly.

Q You say you might have split with Widlitz?

A Possibly.

Q Did you split with Farber?

A No.

Q Did you give it to any other brokers?

A No.

MR. ANDREWS: No other questions, your Honor.

RECROSS-EXAMINATION

BY MR. CHESTER:

Q Originally, in June 1974, when this arrangement came down in Stern-Haskell --

THE COURT: Mr. Chester, there are only two matters that were not gone into on cross-examination--

MR. CHESTER: I have only five minutes, Judge, and I can get everything done in five minutes.

THE COURT: No, you are limited to asking this witness --

MR. CHESTER: I have notes here, your Honor, if --

THE COURT: You can ask about the meeting in Connecticut and the meeting in Mr.Wohl's office. Those are new subjects --

MR. CHESTER: Judge, I have to have this in the record.

Are you denying me to put this into the record?

THE COURT: You can ask the wintess about these two subjects on this recross-examination which are new subjects which he did not testify to previously.

He testified to these subjects for the first time on his redirect examination, a meeting in Connecticut, where he may have met Mr. Benante, and the meeting in Mr. Wohl's office.

On those two subjects you may examine him.

MR. CHESTER: Judge, I want to ask him did he plead not guilty originally.

THE COURT: No, you can't ask him that.

MR. CHESTER: Mr. Wohl went into-- he talked about being completely debriefed.

THE COURT: Mr. Chester,I told you the two subjects you may inquire into.

MR. CHESTER: May I make a proffer into the record for appeal purposes.

THE COURT: All right.

(At the side bar)

MR. CHESTER: The only thing that I want to go into on recross which I felt was proffered under his redirect is-- I wanted to show that he pleaded not guilty originally, and Mr. Wohl went into that he was debriefed, and he went into what other cases he was debriefed in.

He said that one of these cases was dropped at a later date.

I want to ask him why wasn't it dropped then, and why at a later date, and as to his truthfulness in all his past events.

I want to know how long he spent with Wohl yesterday when he found that piece of paper suddenly. And I want to ask him was there any stenotype or shorthand writer in

Mr. Wohl's office during this time.

Mr. Wohl also went into probation.

Under my cross-examination he said he was under probation. Now he said he doesn't know what probation is.

And I want to go into when he will be sentenced, and that's all.

THE COURT: You can't go into that.

You can go into only those areas which were renewed for the first time on his redirect which I have already pointed out.

MR. CHESTER: It is my feeling that these were all brought out.

THE COURT: You have it on the record now.

MR. CHESTER: I can't go into anything.

THE COURT: Those two subjects.

MR. CHESTER: What two subjects?

THE COURT: About the meeting in Connecticut,and Mr. Wohl asked him about a meeting in his office at which he, the witness, for the first time mentioned the payoffs and mentioned Levine.

MR. CHESTER: That's the only thing I will go into then.

(In open court)

RECROSS-EXAMINATION

* * *

MR. ANDREWS: Before the recess, I would request that the jury be instructed that under no circumstances do I accept the truth of the redirect examination of that witness, but because of the limitation, no inference should be drawn that I didn't question him on many of the things he didn't talk about.

THE COURT: We will take a recess.

The jury is excused.

(Witness excused)

(The jury left the courtroom)

* * *

(In open court, jury present.)

C H A R L E S A. S T I L L M A N, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WOHL:

Q What is your profession, Mr. Stillman?

A I am an attorney.

Q How long have you been an attorney?

A I was admitted to the bar in 1962.

Q Could you describe for the jury your practice?

A I worked for a while for one of the judges in the courthouse, became an Assistant U. S. Attorney. I was then in private practice with essentially two firms in the New York area, and for the past three years have been involved in my own practice, together with some other people.

Q Do you represent Philip Kaye?

A My firm does, and I have been handling the matter for Philip Kaye.

Q When did you or your firm begin to represent Mr. Kaye?

A I would say it was some time in March of 1972.

Q Has Philip Kaye communicated to you a waiver of the

attorney-client privilege as to communications between him and you concerning a stock called Stern-Haskell?

A Yes. I spoke to him on Sunday last about that subject, and he indicated to me that he had waived that privilege here, and at my request, I put the question to him again. He reiterated the fact that he waived the privilege with respect to that matter.

Q Did there come a time after you were retained by Mr. Kaye that he discussed with you the stock called Stern-Haskell?

A Yes.

Q When did that occur?

A I would say that it would be some time between March and June 1972.

Q Do you remember the exact date?

A It is hard to pinpoint an exact date, and I think I would be more comfortable leaving it between the time that we first began to represent him and fixing as an outside date early June of 1972.

Q What did he tell you on the subject of Stern-Haskell at that time?

A My best recollection is that he told me that Stern-Haskell was a stock in which he had been involved with some other people, that there was money that changed hands to

stimulate sales of that security.

He mentioned the names Levine, Wax and Stein.

Q Did he tell you anything on the subject of what the various roles of these people had been?

A Essentially, as I recall, that there was money that he got from Stein which he delivered to or gave to persons Levine and Wax. I don't recall their first names.

I do. It is a Walter Wax. And it is Larry Levine, yes.

Q Can you tell us whether or not this description to you by Mr. Kaye of Stern-Haskell was before or after you had discussions with him concerning his possible cooperation with the Government?

A It is hard for me to answer the question in the form in which you put it.

I can give you the chronology of events. I think you could then draw from it what you want.

When we first represented Mr. Kaye there were some conversations in the U. S. Attorney's Office about cooperation.

MR. CHESTER: Can we have the date of this, your Honor?

THE COURT: Yes. Give us the date as best as you can recall.

A That would have been early in the representation, your Honor, so that would be some time in March of 1972.

There came a point where those conversations terminated, and there was an indictment that was returned against Mr. Kaye involving a security known as Lady Goldie Bracelet, and that was some time in late March or early April 1972.

Now, in addition to that there was an SEC injunctive proceeding which commenced some time in the spring or summer of 1972, involving a security known as Coatings, and there was another SEC proceeding in June of 1972 involving yet another security.

MR. CHESTER: What was the name of the security?

THE WITNESS: Coatings, Unlimited.

Another one was Eastern Diversified.

My recollection is, your Honor, that our conversations with Mr. Kaye began--

MR. CHESTER: He keeps saying our and we.

Did he represent this man or did his firm, and when he is talking, is he doing this or somebody else in his firm?

You know, we get back to that --

THE COURT: All right.

Are you the one doing the talking to Kaye, or is it

somebody else?

THE WITNESS: After the first week or two, your Honor, it was me throughout, and I have continually represented and dealt with Phil Kaye on behalf of my firm.

THE COURT: All right. We have that much straight. Proceed.

A Now, I would say that the probabilities are -- I mean I can fix with certainty the fact that a Stern-Haskell conversation occurred after the Lady Goldie indictment. I cannot rule out the possibility that it may have come up before the indictment.

But the events ran fairly close together, and it is really hard for me to pinpoint it any more than that.

Q Did there come a time when Mr. Kaye reached an understanding of some form with the Government?

A Yes.

Q When was that?

A That would have been some time significantly later-- it would have to be going into 1973, and I am not sure exactly when. Conceivably later than 1973, but I would say certainly in 1973, but I am truly uncertain as to when that occurred.

Q During this period, right after the Lady Goldie Bracelet indictment, my question is:

Were you negotiating with the Government to establish some form of cooperation at that point, or were you following some otherpoint of representation with Mr. Kaye?

A With the filing of the Lady Goldie indictment our conversations with your office,the U. S. Attorney's Office, terminated, and we were engaged in representing Mr. Kaye to fight the indictment and, indeed, we were representing him in opposing the SEC's action for an injunction in the case involving the stock Coatings Unlimited that I mentioned before.

Q Did there come a time when you learned that the U.S. Attorney's Office was conducting an investigation into the Stern -Haskell matter?

A I knew that Stern-Haskell was a matter of interest to the SEC some time--

MR. CHESTER: Objection. There is no way this man can know what interest the SEC had.

THE COURT: Overruled. He said he knew.

MR. CHESTER: That the SEC knew?

THE COURT: You are telling us about something you learned?

THE WITNESS: Yes, your Honor.

THE COURT: Proceed.

A -- in connection with another representation of

another client in an unrelated matter.

Now, that was the end of my learning of that fact.

Thereafter, some time in February of 1974 I received a call from yourself, Mr. Wohl. You asked me if I still represented Phil Kaye.

I told you that I did.

You asked--told me that you were conducting an investigation with respect to Stern-Haskell.

You asked me whether Phil Kaye had anything to add to that investigation, or whether he would cooperate with you in the course of that investigation.

Now, that was the time, the next time that I learned at least about what resulted in this indictment.

Q Did you respond to me when I asked you that question?

A I told you that I would talk to my client and get back to you.

Q And what happened next?

A Well, what happened next took place within a relatively short period of time. My recollection is that you told me that you were presenting the matter to the grand jury some time within that time frame, and that you wanted a response from me as soon as possible.

I called my client, he came to my office within a

day or so, and I had a conversation with him concerning Stern-Haskell, and what, if anything, we would do with respect to it.

I told him that it was clear to me that there would be an indictment, and that it was time to decide whether we would go down and cooperate.

He told me that he wanted to continue to cooperate because he had been in some other matters, and I thereupon called you almost-- I mean I am certain it was the same day that I had this conference with him.

I told you that Phil Kaye was willing to cooperate in the Stern-Haskell matter.

I told you that he had information to give you with respect to Mr. Levine, with respect to Mr. Wax. I believe I also mentioned Sidney Stein's name in the course of that conversation.

And we arranged an appointment for me to come down with Mr. Kaye to meet with you.

Within days, in fact, there was a conference at your office. Present at that conference were yourself, myself, Phil Kaye, and Mr. Schatz from the SEC.

Q What happened then?

A We came to your office that day, outlined -- myself speaking on behalf of Mr. Kaye-- what Mr. Kaye had to say

with respect to Stern-Haskell.

We mentioned again the matter with respect to Mr. Levine, with respect to Mr. Wax, with respect to Sidney Stein, the fact that money changed hands, and I remained in the room a short period of time, ten, fifteen minutes, thereabouts, when we went into what I would call an overview of the situation.

Following that I had an appointment before another Judge in the courthouse. I left the room for a period of time. I came back and rejoined the conference in progress, and we went on for a couple or three hours in the course of that afternoon.

Q In any of these conversations you described with Mr. Kaye, did yousay anything about his delivery of any money?

A Yes, that is one of the things that he did, and of course--

MR. ANDREWS: I am going to object to Mr. Stillman's conclusion that that is what he did.

A I wasn't there, but that's what he said he did. He took money from Stein and delivered it to Levine and Wax.

Q When did he tell you that?

A For the first time?

Q Yes.

A Some time between March and June of 1972.

Q When you testified that I called you in February of 1973, was that the first time that you and I had had any conversation at all?

A Yes.

MR. WOHL: No further questions.

THE COURT: Mr. Rubinson, do you have any cross-examination of this witness?

MR. RUBINSON: No questions.

THE COURT: Mr. Feiffer by his attorney Mr. Robson?

MR.ROBSON: Your Honor, I don't at the present time, but can I reserve the right to ask possibly a few questions after the other cross-examination?

THE COURT: All right.

THE COURT: Mr. Chester?

MR. ANDREWS: May we request a side bar conference before you go any further?

THE COURT: Mr. Chester, do you have any questions?

MR. CHESTER: I have a lot of questions, yes.

THE COURT: Just a moment.

(At the side bar)

MR. ANDREWS: Judge, my application to you is to

strike all of this testimony and to direct the jury to disregard it for the following reasons:

His testimony is clearly to the effect that any statement elicited by him from Mr. Kaye with respect to Stern-Haskell came after his first discussion with the U.S. Attorney regarding cooperation, after his first discussions with Mr. Kaye regarding cooperation.

His testimony is clear.

The first thing that he did, even before he was indicted in Lady Goldie was send his lawyer to the U. S. Attorney's Office to talk cooperation.

Apparently he was then indicted. Thereafter he told Stillman things about his alleged activities in this case. It all even then comes after his efforts at cooperation.

The contrivance goes way back then. We thought the first time he sought cooperation was well after his first two indictments. Now we find he sought to cooperate even before he got indicted the first time, and then after that he talked about Stern-Haskell.

It is so overwhelmingly prejudicial, and so unreliable, Judge, that this jury is poisoned.

THE COURT: The point is that you claimed it was a recent fabrication, and the point is that you claimed that that fabrication arose when he went in to see Mr. Wohl,

and that was the basis on which this evidence has been admitted.

MR. ANDREWS: I claimed it manifested itself at the time he finally delivered it to Mr. Wohl. But recent fabrication is a term of art. It means at any time after the criminal act involved. Recent doesn't mean last week or last month, it means after the criminal act and before his testimony in court.

THE COURT: It also means, as the Fayette case says, possible pressure from a Government counsel. It also means that. Recent fabrication relates to that consideration. It was on that basis this evidence was admitted, so the motion to strike is denied.

Let's go on.

MR. ANDREWS: Just one more point, if only for the record.

What we find is that this witness Kaye did not come forth voluntarily. Mr. Wohl called and told Mr.Stillman there was going to be an indictment. Thereafter Kaye came down to tell this story.

Wohl called his lawyer and said there is going to be an indictment. Stillman then came down.

THE COURT: Even then he had previously told his lawyer.

MR. ANDREWS: After he attempted to cooperate the first time he told his lawyer.

THE COURT: Let's continue.

(In open court, jury present)

THE COURT: All right, Mr. Chester.

MR. CHESTER: Thank you, Ma'am.

CROSS-EXAMINATION

BY MR. CHESTER:

Q Good morning, Mr.Stillman.

My name is Bill Chester. I'm an attorney representing myself from Miami, Florida, and one of the defendants charged in this case.

You and I don't know each other, do we?

A No, sir.

Q Now, you brought up some names I had not heard Mr. Kaye talk about before called Coatings Unlimited?

A Coatings, Unlimited. Like coating, like sugar.

Q That was an SEC investigation?

A Right, sir.

Q Was he indicted in that?

A No, sir.

* * *

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AFTERNOON SESSION

2 p.m.

THE COURT: Bring in the jury, please.

(Jury present.)

THE COURT: All right, Mr. Andrews.

CROSS EXAMINATION

BY MR. ANDREWS:

Q Mr. Stillman, I represent Mr. Wax and Mr. Levine. I would like to go through the time sequence of the various relevant events with you.

It is your recollection, is it not, that you were first retained, you and your firm, by Mr. Kaye in about March of 1972, is that correct?

A Early part of that month, correct.

Q At that time, the time that you or your partners first met Mr. Kaye, is there any question but that it was the belief of all of you and Mr. Kaye that Mr. Kaye was about to be indicted?

A It may overstate it. We knew there was a serious problem that confronted Phil Kaye as to whether or not an indictment was imminent, I am not certain that I can say yes to that.

Q I accept that. Of course, no one knows what happens until it actually happens, but there was a very

strong likelihood that he would be indicted in the Lady Goldie -- I know it is not finger --

A Bracelet.

Q Bracelet case, is that correct?

A Correct.

Q And in fact that strong likelihood of indictment was the reason for your professional relationship with Mr. Kaye at its inception, isn't that so?

A Yes.

Q At Mr. Kaye's behest and with his full knowledge, I assume, you sought to negotiate with the United States Attorney on Mr. Kaye's behalf?

A Yes.

Q This is prior to the indictment coming down, correct?

A Yes.

Q And the purpose of that negotiation was, I assume, and correct me if I am wrong, to offer Mr. Kaye's cooperation to the Government in exchange for whatever benefit it may be to him at the time of sentencing in the case, is that correct?

A Precisely.

Q Precisely?

A Precisely.

Q The negotiations that you undertook in his behalf came to naught, is that correct?

A At that time.

Q That is, in March of 1972?

A That's correct.

Q You were not able to effect a meeting of the minds with the United States Attorney, is that so?

A That's correct.

Q And, so to speak, all bets were off with respect to negotiations at that time, is that correct?

A We stopped talking.

Q Thereafter Mr. Kaye was in fact indicted in the Lady Goldie case?

A Correct.

Q And that would have happened approximately a month after you first commenced your professional association with Mr. Kaye?

A That is approximately right.

Q And your best recollection is that sometime during that month Mr. Kaye told you about his involvement in Stern-Haskell, is that correct?

A My best recollection is that that occurred between that period of time and no later than May, April or May, of 1972 -- between April and June.

Q So it may have happened indeed after you first were retained by him, any time thereafter, up until May or June of that year 1972, is that correct?

A Correct.

Q But you have no specific recollection of the exact time when he first told you about Stern-Haskell and his involvement?

A I don't know what I have said, no.

Q Thank you.

When Mr. Kaye was indicted in the Lady Goldie case in March of 1972, was there a decision reached with respect to the defense of that case, between you and Mr. Kaye?

A Yes.

Q What was that decision?

A That we would contest the charge.

Q That you would fight?

A Right.

Q You would prepare a defense and go to trial, is that correct?

A Correct.

Q That decision was reached at the time of the indictment, in March of 1972?

A Perhaps prior, but certainly in that period of

time.

Q At least after the breakdown in negotiations?

A Correct.

Q Did you do anything as Mr. Kaye's attorney to manifest your intention to fit the indictment?

A Prepared motions, interviewed witnesses, whatever else one does.

Q You began your preparation for trial, is that so?

A We were not at that stage yet. We were gearing up for it.

Q Interviewing witnesses?

A Yes.

Q With a view toward trial?

A Yes.

Q You were preparing motions to submit to the Court directed at the indictment, is that correct?

A I believe, in fact, they were submitted.

Q And they were also served upon the United States Attorney, is that correct?

A Yes.

Q And he was on notice that you were fighting it?

A I hope so.

Q What happened thereafter, after you started

preparing for trial, preparing the defense? What happened to Mr. Kaye -- let me withdraw that and rephrase it.

Q Was Mr. Kaye in fact indicted a second time after you began preparing your defense in the Lady Goldie case?

A Yes.

Q When was that?

A That was the Park Avenue Knitting.

Q As a matter of your professional experience and also based upon what you observed at that time with respect to Mr. Kaye's problems, did you see any correlation between Mr. Kaye's manifestation of an intention to fight the first indictment and the handing down of the second indictment, some two months later?

A I don't follow your question. You want my opinion on something?

Q Yes.

A What is it you want my opinion on?

Q Was there any correlation between the handing down of the second indictment in June and Mr. Kaye's decision, known to the Government, to fight the first indictment handed up in March?

A The Government thought that there was another case with respect to Phil and returned the second one, or

asked the grand jury to return the second indictment.

Q The Government asked the grand jury to indict him again?

A Yes.

Q At this point Mr. Kaye still decided not to cooperate, after the June indictment, is that correct?

A Correct.

Q At some point in time Mr. Kaye did decide to cooperate with the Government, isn't that so?

A Correct.

Q With respect to what case, sir?

A I don't think you could put it in terms of a case but I suppose if you had to put a handle on it, it really began to manifest itself after the Coatings civil proceedings was completed. It seemed to me that was an appropriate time to go back to the Government because as far as Coatings was concerned, I really felt we had a case where Phil was not involved and on the other hand it may be at the time I felt he had relative testimony to offer and I marched down to the courthouse again in an attempt to resurrect what had fallen apart before.

Q At that time did you mentionto the Government Mr. Kaye's alleged involvement in the Stern-Haskell case?

A No.

Q What point in time was that when you took yourself back down to the Government?

A It would have been after the Coatings trial, which was in the early fall, I think, of '72 and sometime prior to the time that he pleaded guilty to the case before Judge Cannella.

Q Do you recall when that was, approximately, that he pleaded guilty?

A I thought somebody had the date this morning and I don't remember as I sit here now.

MR. GRIMES: October '73.

Q Does October '73 sound about right to you?

A Yes, in the sense that that would be an outside date.

Q In which case did Mr. Kaye plead guilty to before Judge Cannella in October '73?

A Park Avenue Knitting.

Q He was permitted to plead guilty to one count in the Park Avenue Knitting case, is that correct?

A Yes.

Q He was originally charged with numerous counts in that indictment, is that your recollection?

A It is my recollection that there was more than one count in that indictment.

Q And of course such a plea could not be accepted by the Court, the plea to one count of the indictment, without the consent of the United States Attorney, is that so?

A That's correct.

Q And that consent was given to Mr. Kaye, is that correct?

A Correct.

Q And there was some quid pro quo, something that Kaye gave back to the Government in order to get the Government to agree to accept the plea of guilty to one count of a multi-count indictment?

A Correct.

Q What was it that Mr. Kaye did for the Government?

A That he would cooperate, that he would make himself available to testify in any case as to which he had knowledge, that he would be interviewed by various Federal law enforcement officials, including investigators from the U. S. Attorney's office.

I believe he also spoke with an attorney from the SEC concerning a matter that was of some interest to them.

Q At that point in time, to your knowledge, and we are talking about October of 1973, did Mr. Kaye reveal

to the authorities his alleged involvement in the Stern-Haskell transaction?

A I really can't answer that, for this reason, Mr. Andrews.

Once it was established that Phil was cooperating, and that is that he was having these various meetings, I did not attend with him at the conversations he had with the various Federal investigators. So I can't really answer that question for you.

Q I understand, but to your knowledge at that time did he make known his involvement in the Stern-Haskell case?

MR. WOHL: I object to that, your Honor. The witness has testified he didn't attend the meetings and that --

MR. ANDREWS: That is not the sole source. I am saying does he have any knowledge that Mr. Kaye did make known his alleged involvement. If he does, then that is the answer to my question.

THE COURT: All right.

A I have some recollection of Phil mentioning that he mentioned the name of Mr. Levine to a Federal investigator. Now, that's the only knowledge that I have. I never followed through on it and the matter never really came up again, so far as I was concerned, until I spoke to Mr. Wohl

in February of 1974.

Q When Mr. Kaye pleaded guilty to the Park Avenue Knitting case, in October of 1973, there remained against him the Lady Goldie indictment, is that so?

A Correct.

Q And your arrangement or agreement with the Government regarding the Park Avenue Knitting case did not encompass the Lady Goldie case, did.it?

A I don't follow your question, sir.

Q Did you make an agreement to dispose of the Lady Goldie case as part of the agreement concerning the Park Avenue Knitting case?

A Our understanding was that Phil would plead to one count in each of two indictments against him. In a sense, it was immaterial as to which two indictments that would be. One of them would be Park Avenue or Lady Goldie, which I indicated before, essentially arose out of the same state of facts, and another indictment, whichever that might be.

Q But at the time there were only two indictments pending?

A Correct.

Q And he pleaded guilty to one and the other one remained open against him?

A Yes. And it is to this very day, yes.

Q At some point in time the Government contacted you, through Mr. Wohl, and I believe you said that was February of 1974, is that so?

A Correct.

Q And asked you if Mr. Kaye would cooperate in the Stern-Haskell case?

A Correct.

Q Were there further discussions between yourself and Mr. Wohl before Mr. Kaye agreed to cooperate with the Stern-Haskell case?

A After our first conversation?

Q After the first discussion, in February.

A Well, there was an initial telephone conversation, a second telephone conversation, and then there was finally a meeting at Mr. Wohl's office.

Q Did you attend?

A Yes.

Q You testified earlier Mr. Kaye had agreed to cooperate with the Government in all of its investigations in exchange for being permitted to plead guilty to one count in the Park Avenue case?

A Park Avenue, plus another indictment to be selected.

Q Then you did not attend any further discussions regarding his cooperation with the Government until the Stern-Haskell question came up, is that correct?

A Well, almost correct. There were a couple of occasions where I would go down with Mr. Kaye when he would talk -- I believe he had some conversations with Mr. Sorkin, who was an assistant, concerning Coatings, and I believe I went down at one point and was with the two of them as they discussed that matter, but by and large the conversations Phil Kaye had with the various law enforcement people were conversations he had in my absence and with my consent, obviously.

Q Your discussions with Mr. Wohl were to the effect, or indeed Mr. Wohl told you it was his opinion, that there was sufficient evidence to obtain an indictment against Mr. Kaye in the Stern-Haskell case, is that correct?

A I don't think he put it exactly that way, but that was the substance of the conversation.

Q If you can put it more accurately, would you do so, please.

A My best recollection is that it went something like, "I am putting the Stern-Haskell matter in the grand jury. It looks as though Phil Kaye is involved. We understand or I understand, he has been talking to other

assistants, is he interested in coming down to talk to me about Stern-Haskell?"

Q As a result of that conversation, was it your opinion that Phil Kaye would be indicted in Stern-Haskell if he did not cooperate?

A Yes.

Q Did you so advise Mr. Kaye?

A Yes.

Q Did you advise him that that was the time, February, 1974, to make a deal, if he wanted a deal, on Stern-Haskell, because he was going to be indicted?

A That was not exactly what I said to him.

Q Was that the substance?

A I said to him now was the time to "clean up any last remaining matters, any last things you have downtown and let's put it all to bed."

Q In other words, "Go down there and cooperate on Stern-Haskell and clean up all of it and thereby clean up all of your other matters."

A Correct.

Q And that by coming down and cooperating on Stern-Haskell he would have done exactly that, cleaned up all his other problems, is that correct?

A That's correct.

* * *

Q When you say they emptied the contents of the briefcase on the desk, what was the contents of the briefcase?

A The Stern-Haskell stock.

Q To whom were they delivering those shares of Stern-Haskell?

MR. ROBSON: If your Honor please, the testimony should be what she was told.

MS. HARRIS: I will rephrase the question.

Q Did you have a conversation as to who they were delivering those shares of Stern-Haskell to?

A I was simply told to make out a receipt for them.

Q And who told you that?

A Mr. Gardner.

Q And did you make out a receipt for the shares?

A Yes, I did.

Q Do you recall to whom you gave the receipt?

A Either Mr. Feiffer or Mr. Rubinson, I don't know which one.

Q And what ahppened to the shares?

A They were taken to the cashier's office.

Q Do you recall in whose name the shares were made out?

A They were in street name, from the house that was delivering, which I believe to the best of my knowledge was

Lockwood Securities.

Q When you were working at Gardner did you ever have occasion to try to readh Mr. Feiffer or Mr. Rubinson by telephone?

A Yes.

Q Where would you call first for Mr. Feiffer?

A Mr. Stein's apartment.

Q And do you know where that was?

A On the upper East Side, in the 70's.

Q And where would you call first for Mr. Rubinson?

A The same place.

Q If you didn't reach them there,was there another place you would call them to try to reach them?

A Lockwood.

Q And who told you to call Lockwood for them?

A Mr. Gardner.

Q Do you recall ever reaching Mr. Rubinson at Lockwood?

A It is possible that I did.

Q Do you recall ever reaching Mr. Feiffer at Lockwood?

A The same answer.

* * *

CROSS EXAMINATION

BY MR. ANDREWS:

Q Good morning, Miss Nelson. My name is Tom Andrews and I represent Walter Wax, a stockbroker from A. T. Brod & Company, and Larry Levine, a trader from Lockwood Securities.

It is a fact, is it not, that you have never actually earned your living as a trader?

A That's correct.

Q Your experience with that, I am sure you would tell me, is very limited. with the activities on a trading desk?

A Limited to the trading desk, yes.

Q You never sat at a desk and traded securities, is that correct?

A No, sir.

Q Thank you. I would like to distinguish, if we may, between, for example, the Wall Street Journal and its method of reporting stocks that are listed and the pink sheets, the copies which I have this morning, and I will provide them to you.

MR. ANDREWS: Your Honor, this is a copy of today's pink sheets. May we mark it for identification?

THE COURT: Yes.

* * *

Q So that we would get, and you as a financial analyst know, a pretty thorough picture of what happened in any given listed stock yesterday by looking in today's New York Times or Wall Street Journal.

A That is so.

Q You do not get that kind of information from the pink sheets, which list over-the-counter stocks, do you?

A That's correct.

Q As a matter of fact, the pink sheets are compiled two days before they actually are delivered to brokers, are they not?

A Actually between two days and one day.

Q Today is Wednesday, I believe, and you have in your hand this morning's pink sheets which are in the hands of thousands of brokers across the country and isn't it correct that the information contained in that set of pink sheets was submitted by brokers, by traders, to the publication agency on Monday afternoon, up until 5 o'clock? Isn't that so?

A From Monday afternoon through Tuesday, 2 o'clock, because they take telephone quotes.

* * *

BY MR. ANDREWS:

Q I have been foreclosed from asking you whether you find in the pink sheets many instances in which one broker makes a market in any given stock --

THE COURT: I don't think that is disputed. Is that disputed, Mr. Wohl?

MR. WOHL: No, I don't think it is, your Honor.

MR. ANDREWS: I want to point out how numerous the instances are.

THE COURT: She can answer that question. Is that a common thing? I believe you testified to that yesterday, that it is not uncommon for one broker to be the only man with a stock.

Is that your question?

MR. ANDREWS: In substance.

THE COURT: Let's proceed.

Q You would accept the Court's statement that it is not uncommon?

A Yes.

THE COURT: She testified to that yesterday.

Q In those instances, of course, that one broker

would do 100 percent of all the trading in the stock, is that correct?

A Probably. But they are probably inactive stocks if they only have one broker-dealer in the sheets.

Q Nevertheless, whatever trading there is he would do, is that correct?

A That's correct.

Q If a broker was the prime market maker in a stock it wouldn't be unusual for him to do all of a very, very large percentage of the trading in any given stock, is that correct?

A That's correct.

Q Can you tell us how it would come to pass that any given market maker would become the prime market maker in a stock? Can you tell us how that would come to happen?

A Very often it comes about that a market maker is the underwriter for the security when it was first issued.

Q Aside from that instance, I would like to talk about national market forces that might tend to make one trader among his competition the prime trader in a given stock.

Are there any such factors in the national forces?

A Yes.

Q Would you tell us what you would consider to be the national market force that operate in the industry that might give rise to one trader being the prime trader dealing in a security?

A Let me refer to Stern-Haskell. In a security as actively traded during the period and with as many broker-dealers in the sheets, I would consider it most unusual that one broker-dealer would do most of the volume.

Q Of course you would base that upon an examination of all of the brokers that were involved with an eye toward a number of factors, wouldn't you?

A That's correct.

Q You would look to each house, and look to a number of criteria, to determine whether or not it was unusual that one broker was doing the substantial portion of the trading, wouldn't you?

A That's correct.

Q And you have, of course, done that in this case before you render this opinion, have you not?

A Yes, I have. And I found that there are some eight or nine broker-dealers in the sheets, and the only substantial volume comes out of one house, namely, Lockwood.

Q Do you consider that to be anything unusual in

Stern-Haskell?

A I consider it unusual for any stock with that many market makers in the sheets, that one house would do that much volume, yes.

Q I say that before you rendered that opinion you had examined each individual house, hadn't you, that was the competition in Stern-Haskell?

A I have examined how many shares each house has traded, yes, sir.

Q I am saying there are other criteria that work in the market to determine who gets the prime call, and that you acknowledge, isn't that so?

A That's correct.

Q Can you tell us what some of those criteria are?

A Well, one of the requirements under the NASD rules is that a member house who wants to sell a stock to a market maker should check with three market makers for best price.

Q When a member house does check among the market makers, what are the factors he considers in determining which house to take a contract with?

A In the case of Stern-Haskell, it is somebody who is willing to --

Q I am saying generally now, and then we will

relate it to Stern Haskell. What is it generally we are looking to when we decide which house to buy from or sell to?

Let me see if I can lead you a little bit in this area. For example, do we look to the financial responsibility of the house in question? If there are four or five, wouldn't we want to know which was one of the most financially responsible?

A That would be one of the criteria, yes.

Q Did you determine for yourself before you took the witness stand and gave your opinion, which of the houses listed in the pink sheets was the most financially responsible house?

A No, sir, I have not.

Q You did not make that determination?

A No.

Q So your opinion is based upon total ignorance, really -- and I don't mean to insult you, but it is based on total ignorance of the questions that would go through the minds of every person, every trader, every order clerk, who was going to make a contract, what's the financial responsibility of all the houses in the sheets, correct?

A None of the houses in the sheets at this par-

ticular time were of a kind that I, from my experience, would have considered very strong financially.

Q Did you look to see?

A No, I did not, but I have --

Q Did you examine the comparative financial responsibility of various houses listed in the sheets on Stern-Haskell?

MR. WOHL: I object, because the witness obviously was cut off again.

THE COURT: Yes.

MR. ANDREWS: I am sorry.

THE COURT: Repeat the question and the answer.

(Record read.)

A -- sir, if you say the only way that I could make a determine, which house is most responsible.

MR. ANDREWS: No, no, your Honor, this is not what I said, and I request if that was the witness' impression that the question be read back. I did not say this is the only. We are going to examine a number of criteria, and I am going to go through and see which ones you examined before you rendered your opinion.

MR. WOHL: Your Honor, I object. I think the witness was responding to whether she was ignorant of the financial strength of these houses, and I think she is

entitled to give her explanation of that.

MR. ANDREWS: I absolutely agree, but I don't want anyone to misunderstand that I say this is the only criteria. I did not so indicate to the witness, and that's why I thought maybe there was some confusion.

THE COURT: Yes, you were asked how it was that, or whether you had investigated the financial strength of the institutions.

MR. ANDREWS: Yes.

THE COURT: And I believe the witness testified she had not, but had concluded that all of the brokerage firms trading were not particularly strong, and she was about to tell us on what she based that conclusion that they were not particularly strong.

Is that it?

THE WITNESS: That's correct.

THE COURT: All right. You may tell us on what you based your conclusion that all of the brokerage firms dealing in Stern-Haskell at that juncture were not particularly strong, in your opinion.

A Sir, when you are saying to me one of the criteria is financial strength, and in order to determine financial strength one would have to look at the financial statements of these firms. I would have to ask you: Do

you think that each trader when he puts in an order looks at the financial strength and the financial statement of each of these broker-dealers in these firms to make a determination with whom he is going to deal? So I would say he makes his decision on who is the most responsible financially like I do, by feeling and gut reaction, by knowing the street.

Q It is your testimony that market makers don't ask for financial statements of other houses?

A I doubt it.

Q Are you sure of that?

A I doubt it. I am not sure of that.

Q You have never been a market maker, so you don't really know whether or not they look at the financial structure of another house before they get into contracts with them?

A I have spoken with many broker-dealers and many traders during the course of my -- during my carreer in the securities business, and I have heard many people discuss the matter, and I know of no one who has ever asked for financial statements of other houses.

* * *

* * *

Q Miss Nelson, did you inquire as to whether or not various houses listed in the sheets on Stern-Haskell had a reputation in the financial and brokerage community at the time with respect to paying for stock bought and delivering stock sold in timely fashion?

A No, I did not. I think that would be a futile attempt because nobody would remember what happened in 1969.

* * *

Q All right. And have you ever had a discussion with any of the traders that existed at that time that were in business at that time, many of whom are still there, whether or not they would have traded with any of the houses in the pink sheets in Stern-Haskell in 1969?

A No, I did not.

Q You were relying simply on your own opinion never having been a trader?

A That's correct.

Q And you never talked to anybody else about it, is that correct?

A Not about Stern-Haskell, no.

Q What about the houses that were in the sheets on Stern-Haskell? You never spoke to anybody else, is that correct?

A Sir, in 1969 I was the supervisor of the Market Surveillance Unit of the New York Office of the Securities and Exchange Commission.

During this time I did market surveillance of over-the-counter issues by the dozens, and we dealt with these houses over and over and over again, and all our problem stocks seemed to include very many of these broker-dealers, so I have a question as to which is a good house and which is a bad house.

Q That is the basis of your feeling, is that right?

A My opinion.

Q Are you citing indictments of some kind, criminal prosecutions of some kind?

A No, I don't.

Q So you did not check in the financial community to determine what the financial responsibility, delivery responsibility, of these various houses was, is that correct?

A No, sir.

Q Did you check with anyone to determine whether or not, for example, any of these houses that were listed in the sheets were willing to deal in size, do volume?

A No, sir, I did not.

Q So you don't know whether or not they were?

A No.

Q You don't know which of them would?

A First of all, I couldn't check on many of the houses, because many of these are out of business.

Q But their records survived, did they not?

A I believe the records are here, whatever records there are.

Q Of Lockwood they are, but the records could be obtained elsewhere. You had the power of subpoena. You

were with the SEC, were you not?

A We have subpoenaed everything relevant to this case.

Q But you never checked the various other houses in the streets to determine whether there is a good reason why Lockwood and Company did approximately 90 percent of the trading, which you say is not unusual, all things being equal?

MR. WOHL: I will object to that, your Honor. I don't think this witness has testified that Lockwood's doing 90 percent of the trading in this particular situation is not unusual. So I object to so much of Mr. Andrews question as included that little phrase on the end, which is not unusual.

MR. ANDREWS: I say any house doing 90 percent of the trading is not unusual, all things being equal.

I will withdraw the question.

Q Did you inquire as to which of the houses in question cleared through canks, did their back office clearing through banks at the time in 1969?

A No, sir, I did not.

Q You would acknowledge, wouldn't you, that one of the major problems in the securities industry has been back office clearing?

A That's right.

Q And that is not a problem with a house that clears through a bank, is it? Because the bank does the clearing, correct?

A I can't answer that question. I don't know.

Q The probability is that if a house cleared through a bank it would not have back office problems, isn't that so?

A Not necessarily.

Q But it is a much higher probability than if a firm cleared through a bank it would have less problems than a firm that did not, isn't that so?

A I can't answer that, I don't know.

Q Well, you are an experienced expert from the industry. Would you rather have dealt with a house that cleared through a bank than one that did its own back office clearing?

A I would rather deal with a firm of a good reputation who does its own clearing --

MR. ANDREWS: May we have a response to the question?

THE COURT: She was answering it.

MR. WOHL: I think it was very responsive, your Honor.

THE COURT: The witness was answering the question, and you cut her off.

MR. ANDREWS: Your Honor, the response had nothing to do with the question.

THE COURT: It did.

MR. ANDREWS: She is talking about reputation and I am talking about clearing through a bank.

THE COURT: Let the witness answer the question, Mr. Andrews.

MR. ANDREWS: Yes, your Honor.

Q If you had --

THE COURT: The witness is answering the question. Now, read the question and the answer as far as it went, Mr. Reporter.

(Record read.)

A --than with a broker-dealer who deals through a small bank which may not be reliable.

Q Would you call the American Bank and Trust Company a small bank which may not be reliable?

A No.

Q You would call that a substantial bank, wouldn't you?

A Yes.

Q All right. Given two over-the-counter houses,

one of which clears through the American Bank and Trust Company, and another which does not, wouldn't you prefer to deal with the one that cleared through the American Bank and Trust Company?

A Not necessarily.

I think I will take Hans Kriek any time.

Q I am talking about in a given stock, two houses, one of which does not clear through a bank and one of which clears through a bank the likes of American Bank and Trust Company. The only factor. Wouldn't you rather deal with the one that cleared through American Bank and Trust Company?

A Given that both broker-dealers have the same type of reputations.

Q Everything being equal except that one fact, one clears its own back office, the other clears through American Bankers Trust, which would you rather do?

A I would rather take the bank, if clearing is the only factor.

Q It is just a factor, one of many.

Did you inquire which of all the houses listed in the pink sheets cleared through a bank?

A No, I did not.

Q You found that was an irrelevant factor to consider but got up and gave your opinion, is that so?

A That's correct.

Q You testified earlier on direct this morning that you had read prior transcripts. I show you this transcript of Thomas Fox, and ask you if that was the one that you were referring to.

Would you examine it, please?

(Handing to witness.)

A I will have to qualify my answer to say I read Mr. Fox's transcript and I don't knowwhether this is the transcript I read and it was several months ago, and it wasn't bound, and I don't recall whether this is it, but I did read some transcript of Mr. Fox's testimony.

Q You read a transcript of Mr. Fox's testimony at the civil trial regarding Stern-Haskell, is that correct?

A Part of it. Not the whole thing.

Q Mr. Fox is in fact an employee of the Securities and Exchange Commission as are you?

A Yes.

Q And you know from reading his transcript that he testified as an expert at the civil trial, is that correct?

A That's correct.

Q Is Mr. Fox alive today?

A Yes, he is.

* * *

Q Have you spoken to Mr. Fox recently?

A I haven't spoken to Mr. Fox in years.

Q In when?

A In years.

Q But he is, to your knowledge, an expert, is that correct, in over-the-counter trading?

A I understand he is.

* * *

* * *

THE COURT: What is this all about? Why the Government couldn't call Mr. Fox, asking this witness that?

MR. ANDREWS: I would like to know --

THE COURT: What is the point of that?

MR. ANDREWS: You know there is a very lively issue

here called pretrial delay. It was raised previously to the trial, it will be raised again, and I am sure if things do not go well for these men, it will be raised on appeal.

The Government, while it had all of its discovery some seven or eight thousand pages of testimony worth, called Mr. Fox in 1972 at the civil trial, who gave as an expert for the Government, opinions which I say are nothing short of preposterous in the context of the evidence that has come out at this trial.

I am going to argue that the jury ought to draw an inference that because the Government swapped experts -- they wouldn't dare put Fox on that stand--having given some several hundred pages of testimony, to come before this jury and expose himself when he went under oath before Judge Palmieri and said things that are literally incredible.

They have not gone so far with this witness. If they put Fox on the stand, I submit the case wouldn't even have to go to the jury. That's what this is about.

I am making a foundation for an inference I want the jury to draw, and an appellate point if we are not successful in getting an acquittal here.

The appellate point is the Government put

themselves in an extraordinarily good position by knowing which witnesses will stand up well at this trial, having ut them under fire before.

I know that, Judge. This is the best illustration there is of the fact.

THE COURT: Can I ask a question?

MR. ANDREWS: Yes.

THE COURT: Did you hear the witness testify she was not working for the SEC in 1972?

MR. ANDREWS: Yes.

THE COURT: When that trial was on?

MR.ANDREWS: Yes, but Fox was, and he knows the case intimately.

THE COURT: The point is they couldn't have called her, isn't that so?

MR. ANDREWS: But Mr. Fox, their expert, developed this case.

THE COURT: This is just an argument.

MR. ANDREWS: I am putting it in the record not in bad faith. He developed the case, testified as their expert in 1972 before Judge Palmieri --

THE COURT: If you can slow down a little bit, Mr. Andrews, it might be possible for the reporter to get that running argument of yours.

MR. ANDREWS: I'm sorry, Judge.

THE COURT: You are speaking at a hundred miles an hour.

MR. ANDREWS: I know, Judge. I'm sorry.

THE COURT: Now, you have been told about that repeatedly.

MR. ANDREWS: It is a habit I have had--

THE COURT: But you have a habit of talking and wanting to talk over the judge and everybody else here.

MR. ANDREWS: I understand that.

THE COURT: Just to get your point in --

MR. ANDREWS: Yes.

THE COURT: You don't care how fast you talk and you don't care about whether the reporter gets it or not,

MR. ANDREWS: I do care.

THE COURT: Have you been reading the transcript in this case and see how your dialogue comes out?

MR. ANDREWS: As much as my client could afford to buy and it's been very sketchy.

THE COURT: You ought to read and see how you are coming out on it.

MR. ANDREWS: And the point I was making, this is a propensity I have had to fight all my life --

THE COURT: The reporter cannot get it.

MR. ANDREWS: I'm sorry, Judge. I speak rapidly.

The point I was getting at is Mr. Fox started the investigation in 1969, did all the spadework, testified as their expert in 1972, and gave opinions which in my opinion are preposterous with respect to the trading.

THE COURT: And as the Government points out, you can call Mr. Fox as your expert.

MR. ANDREWS: I have no obligation to put in a defense. I do have the right to draw an inference from the Government having swapped experts when the testimony of Fox at the civil trial is totally inconsistent with their star witness at this trial.

His opinions given under oath are absurd and proven absurd by the testimony given at this trial.

I think it is--

THE COURT: How are we to determine that? You have got a volume in your hand. How many pages in that volume?

MR. ANDREWS: Several hundred pages of transcript at least. But I can point out to you--

THE COURT: You want me to sit here and conclude that Fox made proposterous or gave preposterous opinions and therefore you ought to be able to drag this trial on for another week asking this witness: Isn't Fox preposterous?

MR. ANDREWS: No, Judge.

What I want to do is ask your Honor to draw the inference that I think cries out in the interest of justice that when the Government switches experts and the other expert is alive and well, there has to be a good reason for it. That's all. That's the reason I am doing this, your Honor.

If you want me to stop it, I will; if you feel it is irrelevant. But I think it is terribly relevant to the question of whether or not the Government has a real case.

THE COURT: I don't have any basis for making any such conclusion. I haven't read those several hundred pages.

What am I going to base it on?

MR. ANDREWS: I can show you Mr. Fox went for a hundred pages saying that 5000 shares delivered to Stern-Haskell were protection against a downside market, in his opinion, his expert opinion, and Stein got on the stand and said it was a payoff to Levine in May and June.

Fox put himself out as an expert before Judge Palmieri and misled him with preposterous opinions under oath.

I don't make these points out of the clear blue sky. I have four hundred pages to base them on.

That's the reason for this line of questioning. I am going to ask for an inference here by the trier of facts, one that I think is justified and in fact leaps out at us.

Why change an expert when one is alive and well?

MR. WOHL: Your Honor, the Government requests that the Court rule at this time that this matter related to Mr. Fox is irrelevant and that Mr. Andrews not be permitted to go on with this line of questioning.

We have here a witness that the Government never called. Mr. Andrews calims that that witness' testimony was preposterous, and, therefore, he would have been subject to some form of attack, or his opinions were wrong.

That is like any other case where the Government doesn't call a witness whose opinions would be wrong.

The defense is not entitled to draw any inference from that, it would seem to me. This is a witness who was not called. Therefore, he is entirely irrelevant to this particular case unless Mr. Andrews wants to call that witness.

The civil trial was a different trial. The fact that the SEC chose to call that witness in the civil trial is entirely irrelevant to this case, the Government would submit.

MR. ANDREWS: The only point I make is the

flexibility of the Government, and I point out that Mr. Fox,in his opinions under oath served their purpose in 1969, were wholly, totally, thoroughly inconsistent with their burden of proof in 1975.

If we can't draw some kind of inference out of that then I think we are on Gulliver's Travels here; I really do.

THE COURT: The Court's ruling is that the fact that Mr. Fox is not called as a witness is irrelevant, and you can't go into it.

You can call Mr. Fox as your own expert. You can look at Mr. Fox' transcript there and put questions to the witness who has testified as to certain matters here. You can ask her about that, if you want to do that, but we are not going into why the Government didn't call a particular witness.

MR. ANDREWS: Would your Honor consider calling Mr. Fox as a Court witness in the event that we do put in a defnese here and choose to call him, because I don't want to be responsible for his credibility-- I would like to be able to attack it.

THE COURT: No, I don't have any idea what Mr.Fox testified to at the civil trial.

MR.ANDREWS: Should it come to pass, can I submit

a precis of his testimony?

THE COURT: I don't know what you are talking about, so I can't rule on that.

You have several hundred pages you would like to throw at me and say: Rule on it.

MR. ANDREWS: I wouldn't do that. I would submit a precis of it if it comes to pass.

THE COURT: We are not going to go into that, and the witness will be brought back, and the jury will be brought back, and you can examine this witness on her direct testimony here, and you can ask her whether she agrees with a certain opinion perhaps that she read there of another expert, or something like that.

MR. ANDREWS: Yes. But, your Honor, I think that would lose the effect of what I want to do. I have other lines of questioning and very little time so I will go on to something else.

MR. ROBSON: I have an application for the withdrawal of a juror on the basis of an answer the witness gave in which the answer was competely unresponsive.

The witness was asked by Mr. Andrews whether she had ever asked any of the people in the trading activities of brokerage firms about the financial responsibility of the brokerage firms who were making a market in this stock,

and the witness replied that she had not, and then volunteered the answer that it was not necessary for her to do that because in her period of service in the Enforcement Division at the SEC, she had ascertained that the brokerage firms making a market in this stock were all firms that were involved in problems and gave trouble to the SEC and therefore she was able to draw a conclusion.

In view of the fact that the basic issue, or one of the two basic issues in this case, is the nature of the activity of the firms trading in this stock, as to whether or not manipulating, I submit that the prejudice resulting from that witness' uncalled for and unresponsive statement is such that a dismissal of a juror is warranted and the calling of a mistrial is necessary.

MR. ANDREWS: I join in the motion.

THE COURT: It is denied.

MR. ROBSON: In the alternative may I request the answer be stricken and the jury be instructed to disregard it?

MR. ANDREWS: I join in that.

As lawyers, we try to carefully frame our questions. That answer was unresponsive.

THE COURT: He asked her what she based her opinion on.

MR. ANDREWS: I did not. I asked her: Did you ask members of the financial community? was the way I framed it so as not to permit her to ramble into: Well, I know from my experience at the SEC that they are all, we had a lot of troubles with those houses.

I asked her carefully: Did you check with members of the financial community?

These people give answers like: Yes, I remember that day, that was the day after Mr. Levine beat up his wife.

That is the kind of response you get from these witnesses.

I ask your Honor to instruct them to be responsive. I did not give her her head on that line of questioning at all.

MR. WOHL: The Government would submit it was entirely responsive because Mr. Andrews was harping on what he was implying was the witness' failure to investigate the reputation.

THE COURT: Yes, absolutely true.

MR. WOHL: They do so much with implications here --

THE COURT: I am not going to discuss it any more, Mr. Andrews.

Bring in the jury and the witness.

MR. ANDREWS: Will your Honor strike that answer?

THE COURT: No. Because you brought it out.

MR. ANDREWS: I put a direct question to the witness that did not permit that answer.

THE COURT: You certainly can't get a mistrial on anything you bring out.

MR. ANDREWS: The question speaks for itself and it does not permit that answer. It was: Did you ask people in the street?

THE COURT: Stop talking, Mr. Andrews. Just stop talking.

MR. ANDREWS: Yes.

THE COURT: And when the witness comes in, you proceed with your cross-examination.

MR. ANDREWS: Yes, Judge.

MR. KEEGAN: May we have a morning recess?

THE COURT: We will go on for another few minutes.

(In open court, jury present)

BY MR. ANDREWS:

Q Ms. Nelson, you testified you did not prepare the chart No. 670, is that correct?

A That's correct.

Q But you are familiar with it and you have worked

with it, is that correct?

A That is correct.

Q I show you another chart that bears the No. 255, a Government exhibit.

Would you look at that and tell us in what way, if any, it differs from the Exhibit 670?

A There was a printing error made on one of the days. I would have to check.

Q Can you tell me which day, what the error was?

A I believe on May 26th.

Q What was that printing error?

A You will notice that at 11:25 you see a trade where Lockwood purchased 900 shares at 4?

Q Yes, Ma'am?

A From Mr. Feiffer. 600 shares at 4, 500 shares at 4, and I think the 300 shares from A. G. Edwards at 3-1/2, and then the same trades are repeated again.

Q I see.

In the chart that you have with you, the chart you are holding you your hand now, is that correct?

A Yes.

Q So because you say of those three errors the whole chart was substituted for the present chart that we are using, Chart 670, is that correct?

A Yes.

Q Is there any other difference that you know of between the two exhibits?

A I believe that the trader's name we determined was not really terribly relevant and could be taken out.

Q But you did decide to substitute the chart because the earlier chart bore the trader's name next to each trade that you could identify with a trader, is that correct?

A That's right.

Q And there are how many trades in total, is it 217 some--

A I didn't count them.

Q Well, would you accept as a pretty accurate figure 217 trades?

A I couldn't even venture a guess. I didn't count.

* * *

correct?

* * *

Q I will withdraw it.

The object, then, of the trader in the trading house is to make a profit dealing as a principal and by that I assume you mean that he buys stock for the house and hopes to sell it at a higher price than he paid for it; is that correct?

A That is correct.

Q Or he sells stock for the house and hopes to replace it later for a lower price than he sold it for, isn't that correct?

A That is correct.

Q And the first thing I described is he went long in the stock, bought it, held it, resold it, hoping that he would get a higher price on the resale, isn't that correct?

A That is correct.

Q And the next thing I described was he went short in the stock, he sold stock he did not own, isn't that correct?

A That's right.

Q And he hoped that at the time he was called upon

to deliver the stock he would be able to buy it in the market at a price cheaper than he sold it for, isn't that so?

A That is so.

Q And that is how he makes a profit on a short sale?

A Yes, sir.

Q And there is nothing wrong at all with selling short, is there?

A There is nothing wrong with selling short as such.

Q Nothing wrong about--

THE COURT: Would you let the witness finish her answer?

MR. ANDREWS: I'm sorry.

Q There is nothing wrong with it as such?

A As such.

Q There is nothing illegal, immoral or even frowned upon in the concept of selling short, is there?

A There is not.

Q It is in fact done every day as the other side of trading, the long or short stock?

A That is correct.

Q Absolutely nothing wrong with it in and of itself?

A In itself, no, unless there are other circumstances which may tend to make it look wrong or be wrong.

Q There is nothing wrong in going long in a stock, buying it and holding it?

A No.

Q Unless there are some other circumstances?

A That is correct.

Q So both long and short are in and of themselves good things, certainly morally neutral things, there is nothing wrong with either one of them, is that true?

A That is correct.

Q You testified yesterday, did you not, and correct me if I am wrong, that the way you make money when you go long is for the stock to go up?

A Thatis correct.

Q And stock must go up in order to make money, is that correct?

A That is correct.

Q I put it to you then as an expert: If the market is 3-1/2 to 4 on a given day and the trader buys the stock at 3-1/2 and later that day sells it at 4, has he not made money?

A Yes, he has.

Q And has the market moved?

A No, it has not.

Q So the stock going up -- and yet a trader made money?

A That is correct.

Q So then you would really modify your initial position, the stock does not have to move in price for a trader to make money, isn't that correct?

A Would you repeat that, please?

Q You would then modify your initial answer, that a stock really does not have to move in price outside of the 3-1/2-4, bid-asked, for a trader to make money when he is long in the stock, isn't that correct?

A Thatis correct, in the over-the-counter market.

Q And the converse would show in a short sale, it doesn't have to go down, in the same sense?

A No, it does not.

Q And if the trader were to buy the stock and if the range were 3-1/2-4 and the trader bought at 3-1/2 and sold at 3-5/8, he would make money?

A Yes.

Q That's his object, isn't it, to make money?

A Yes.

Q And most traders trade on what is called in the industry quarters and eighths, don't they?

A I don't know whether most do.

Q Well, in fact, traders don't pay commissions?

A That's correct.

Q They represent themselves as principal?

A Right.

Q They do not pay a brokerage commission when they buy and sell for their own account?

A That is correct.

Q So anything that they make above their price that they paid for the stock is profit for them, isn't that correct?

A That's correct.

Q And they can sell at a very small increase and make money and substantial money because of the large volume in which they trade, isn't that correct?

A Yes, they can.

Q The customary language in the street is "He did quarters and eighths, he is a trader," isn't that correct?

A I don't know of that expression, but I have seen many stocks traded with spreads of 5/8, 3/4, $1, $5.

Q Even though the spread is 5/8 or 1/4 or $1, that doesn't mean the stock will trade at the extremes of that spread?

A Not necessarily.

Q Quite often there are trades in the middle of that spread and if there is a point spread a stock probably trades by a quarter or an eighth within that spread?

A No, there are a lot that trade with higher spreads than that.

Q And a lot trade at quarters and eighths?

A Yes.

Q And an overwhelming majority quote at quarters and eighths and that gives us an orderly market and --

MR. WOHL: Objection, your Honor.

There are three questions all lumped into one, whether the majority trades in a certain way and what the effects of that is--

MR. ANDREWS: We are dealing with an expert, your Honor, and it is very difficult to put third grade questions to her and I think we have to put questions that are complex, but they are not two questions. They are one.

THE COURT: Well, you have to remember, Mr Andrews, that the jury is trying to understand this, and the witness may, but I don't know that the jury does.

MR. ANDREWS: I understand,your Honor.

THE COURT: If you want the jury to understand it, try to break it down.

MR. ANDREWS: I am having enough trouble to keep understanding it myself.

Q When a stock trades in the range whereby a trader makes a profit of a quarter to an eighth, that does tend

to make an orderly market, does it not?

A Everything else being equal, it does.

Q That market would certainly be much more orderly, for example, than a market in which stocks were leaping by a dollar, two dollars a share, isn't that correct?

A Yes.

Q And of course what we all want in the industry and what you in the SEC want in the industry is a fair and orderly market, isn't that correct?

A That is correct, but that doesn't seem to be the case in Stern-Haskell because --

MR. ANDREWS: Your Honor, this is not responsive. She will have a chance on redirect if she wants to add something.

THE COURT: Yes. The Government will bring out anything it thinks is necessary on redirect.

Just try to answer the question.

Q In fact, you would call a volatile market one in which there are huge increases in price in a very short time, would you not?

A That is correct.

Q And an orderly market is one in where the stock trades at a reasonable range within a point and the profit returns a quarter or an eighth on a trade?

A Within a point I wouldn't say is necessarily reasonable.

Q Within a point there is even a fairly broad spread?

A That depends on the price of the stock.

Q But most inexpensive stock, trading in the 3 to 4 range, have spreads from 3/8 to 3/4, isn't that correct? And a point would be the outside spread on the bid and asked.

Would you say that is so, in your experience?

A I would hope that a good business practice would be that the spread would be smaller.

Q And the trading provit to a trader may be smaller than a quarter, it may be an eighth in a good orderly market where the business practice is followed and the spread is narrow?

A I would say that would be a good spread, but not necessarily an orderly market.

Q In an orderly market with a narrow point spread, the profit to a trader is in the quarter to eighth of a point range, isn't that so?

A Yes.

Q Thank you.

If a trader makes the quarter of a point, he has made a profit.

A That's correct.

Q And usually he does that by two telephone calls, isn't that right, buys here and sells there, true?

A Yes.

Q And do you know what the profit is on a thousand share trade if the trader makes a quarter of a point?

A Yes.

Q What is it, please.

A $24.

Q How many?

A $25.

* * *

Q You considered it irrelevant, that a trader whose primary objective it is to make a profit in a stock made a profit in the stock?

A Another primary objective of the trader is also to deal fairly with his different customers.

Q Isn't it the primary objective of a trader to make a profit in a stock, isn't that so, in his trading?

A That is one of his responsibilities.

Q Thatis the primary reason why he is a trader.

A Right.

THE COURT: She has answered the question.

Q You considered it insignificant on the question of whether or not he was acting here as a trader with no other considerations, whether or not he actually made a profit consistently, day in, day out, in the trading of the stock? You considered that irrelevant?

A Yes, to the question.

Q And it didn't enter your mind, "wait a minute, fellows you are doing something wrong, getting a dollar a share under the table, what does he care about knocking off an eighth or a quarter on each trade, what did he need that for?"

A I was not aware there had been any kickbacks. You just point that out to me.

Q You were not told that?

A No.

* * *

* * *

Q As we concluded earlier, the trading at the end of the day was substantially profitable to Lockwood, isn't that so?

A Yes. They got a higher price than they paid for the stock.

Q So when they were paying $4 a share to Granger and to Shaskan, as you pointed out, and those were limit orders, they were able to resell that stock at higher prices and make a profit, isn't that correct?

A That's correct.

Q And that profit ranged within a quarter to an eighth, isn't that correct?

A Three-quarters in the case on the A. G. Edwards trade.

Q On that 300 shares?

A Yes.

Q That you would call an orderly market, wouldn't you, and not volatile?

A That is correct.

Q I would like to show you a Government exhibit, I believe its 542A -- by the way, having examined the chart, are there any other days you would say varied substantially in any way from what we have discussed today, just now?

A Nothing very substantial in any way.

Q Thank you.

Now, I show you this trade ticket, 542A. It is marked 542A in evidence, I believe.

I ask if you had examined it?

A Yes, I have.

Q Can you tell the jury what is meant by the phrase "stock borrowed" in the vernacular, the rubric, of Wall Street and the financial community?

A Thatmeans that an individual or a brokerage firm will borrow a stock from another individual or a brokerage firm.

Q And borrowing is different from selling in the sense you don't own it and you don't pay for it, isn't that correct?

A That is correct.

* * *

Q You don't know what was the purpose of the borrowing of the stock, do you?

A No, I don't.

Q You don't know whether it was to cover an eventual short, where it came from, who was the lender, you don't know anything, is that true?

A That is correct.

Q You didn't look at the records to establish that?

A To my knowledge there is no record I can look at to establish that.

Q You didn't attempt to speak to anybody who might know?

A To my knowledge, there isn't anybody I can speak to. I have no access to anyone at Lockwood.

Q Did you ask the Government if there weren't bookkeepers, employees of Lockwood, the owner of Lockwood that you could talk to to explain the transaction to you?

A For the purpose of my testimony it was not determined that I speak to anyone.

Q You did come here to say that that is strange to you, among all the things you have said, is that correct?

A That is correct.

Q And before you said that, did you ask the Government if you could speak to anybody to find out what that was

about before you gave your testimony?

A No, I did not.

Q Thank you.

THE COURT: At this time we will recess until two o'clock for lunch.

The jury is excused.

(The jury left the courtroom)

THE COURT: The witness is excused until two o'clock for lunch.

(The witness left the courtroom)

THE COURT: Mr. Keegan, and Mr. Gardner, do you plan to cross-examine this witness?

MR.KEEGAN: Yes, your Honor. I need only 20 minutes, at the outside.

MR.HIGGINS: I have about 30 minutes, your Honor.

MR. ANDREWS: Do I have any more time?

THE COURT: No, you are five minutes over your time.

MR. ANDREWS: Your Honor, I represent two clients and if they had hired separate attorneys, they each would have two hours and I would request your Honor to reconsider. This is the only witness I have ever used my limit on, Judge.

THE COURT: Your time is up, Mr. Andrews. You spent half your time arguing, repeating.

* * *

RECROSS-EXAMINATION

BY MR. CHESTER:

Q On the listing application, when they listed to go into the pink sheets for Gardner Securities on April 14th, do you remember when that was shown to you?

A Yes.

Q Do you have that, the listing application?

A Yes.

Q This states this stock is not registered, it's a spinoff from National Ventures two for one, or one for two?

A One for two, it says here.

Q What was your testimony the SEC does when it gets a copy of this a couple of days later?

A I said that I don't know whether anybody looks at it at that time until such time as we may have a problem with a stock, and there may have been a price rise, and then we will use this as a reference.

Q There is no red flags with the SEC then when they get a listing application that a spinoff stock has been accomplished and is going to start trading. The SEC doesn't have any announcements or regulations as to this listing application that they will immediately check a spin-off stock?

A Sir, at the time this spinoff took place in 1969, and just a few months before that, the spinoff technique was a very brand-new technique that nobody had been aware of at the SEC until such time that I found all of a sudden dozens of stocks with spinoffs, and I was the person who brought it to the attention of the Washington office that I thought it may possible be a Section 5 violation and that they should look into the matter whether this is or is not an exemption. But there was never such an exemption for a spinoff as such.

Q In 1969 there were many, many, many spinoffs, and you were the first lady who caught this and said it may be a possible violation?

A That is correct.

* * *

* * *

THE COURT: All right.

As to count 20, and the defendants Rubinson and Chester, that count is dismissed.

* * *

* * *

With those preliminary remarks, the Government may proceed with its closing summation.

Are you ready, Mr. Wohl?

MR. WOHL: Yes, your Honor.

Your Honor, counsel, Madam Forelady, ladies and gentlemen of the jury.

It has been a long trial; it has been somewhat longer than we expected it to be. On the other hand, you have seen developed during this trial a securities fraud the Government submits from start to finish.

You have seen the defendants in this case, along with other people, turn a used car company located in the Bronx, into a public corporation. You have seen them and their colleagues market to the public over a hundred thousand shares of stock in that company, without making any significant public disclosures of information to the public investors who they sought to sell that stock to.

The Government submits you have also seen how they have used manipulative and fraudulent devices in order to affect the price of that stock, so that the price would go up and increase the profits to themselves when they sold it to unsuspecting investors.

You have also seen how they printed up non-transferrable stock, or restricted stock, and then used it--one of the defendants, Michael Gardner, used it to get a loan from a bank without disclosing to the bank that this stock wasn't stock that was ordinarily tradeable in the ordinary course of business, through the securities markets but, instead, was a restricted type of stock, so that when the bank sought to collect on the loan it didn't really have any collateral that was worth nearly as much as it had been represented to be worth when the loan was originally obtained.

You have seen, in effect, ladies and gentlemen, that these defendants have taken public investors and that bank, for over a quarter of a million dollars.

What did the defendants have in order to get that over a quarter of a million dollars? Did they have any extraordinary expertise in the normal way financial operations are run, in how companies ought to be going public, how the stock ought to be distributed? Did they

have any extraordinary thing to sell, any extraordinary produce? The Government submits that they did not.

You have seen how this entire operation was run primarily out of Mr. Chester's house down in Florida and also out of Sidney Stein's apartment on 72nd Street in New York.

You have seen, ladies and gentlemen, that the stock that was being sold here was stock of Stern-Haskell, a used car company that was in fact losing money at the very time that stock was being sold.

You have indeed seen that the stock was highly over valued and in fact almost worthless at the very time it was submitted to the public.

While the members of the public, ladies and gentlemen, were actually buying that stock, there was an accountant in the processing of preparing an audited financial report of Stern-Haskell stock that should have been available to those public investors, but it wasn't available, and what did that show? That is in evidence and you can look at it, and it showed that the liabilities of that company exceeded its assets. It showed that the stockholders equity in that company was not any great value that would justify a price in the public market of 2, 3 or $4 per share; that value was a deficit, it was a deficit, ladies

and gentlemen, and that is the type of stock these defendants were marketing to the public without any disclosure whatever.

What did they have? What did the defendants have that caused them to gain so much money? What they had, the Government submits, ladies and gentlemen, was nothing more than a willingness to violate the law, a willingness to short cut the normal procedures that all of the proper, banking and financial institutions in the United States have to follow.

That was the product they were selling. They were saying, "Look, Mr. Stern and Mr. Haskell, if you don't want to go through all the cumbersome procedures the SEC has to protect investors, don't go through them, come on down to my house in Florida," says Bill Chester, "and we will set it up so you don't have to do anything about all of that and don't worry about the public investors either."

What else did the defendants have to have available to make so much money? They had a willingness not to let the price of that stock be determined by ordinary supply and demand functions that are supposed to affect the price in a free-trading market, rather, they wanted to control that price, fix the price by giving secret cash pay offs and other methods I am going to describe to you in more

detail and that you have already heard a great deal about.

Basically, it substituted artificial devices designed to move the stock up, that did move the stock up to around 3 to $4 a share, where the defendants sold it out into the public market.

What did they get out of this, ladies and gentlemen? It was summarized for you at different points in the trial but I would like to go down at the beginning so you will have it in your minds.

The evidence showed that out of Mr.Feiffer's account alone, approximately $158,000 worth of Stern-Haskell stock was sold to the public. That doesn't even count the stock that was sold out of the B'Noth Jerusalem account, where you will recall there were an additional number of shares sold.

That resulted in, it was testified, approximately $100,000 available to the defendants Rubinson, Feiffer and Stein, out of which they paid, Stein said, some in taxes, and the rest was theirs.

In addition, you recall the testimony was that they kicked back part of that, about $50,000 of it, to the defendant Levine on trial, the defendant Wax here on trial, and the defendant Kaye, who has already pleaded guilty.

In addition, ladies and gentlemen, let's not

forget about Bill Chester. What did he have to get out of this deal? He has been telling you, at least through cross examination, he didn't sell any stock--

MR. CHESTER: I object, your Honor. I didn't tell them anything. I didn't even testify. The Government didn't even have a case and I didn't even have to testify and for him to tell them what I testified to, I resent.

THE COURT: Proceed, Mr. Wohl.

MR. WOHL: The question then is did the Government establish that Mr. Chester gained anything out of this proceeding. The Government submits it did.

First of all, you recall the Government established that a number of sales occurred out of the account of Frances Roberts, and it was established that that was Mr. Chester's former wife. You recall Sten Nordin testified that one of his little jobs was to run back and forth between Mr. Chester's house and Mrs. Roberts' house and take cash payments back and forth, returning the proceeds to Chester, who was the real seller of the stock.

In addition, the Government introduced into evidence one of the checks that had been given to Roberts in payment for her sales of Stern-Haskell stock and that check was endorsed over to Mr. Chester. Apparently they couldn't

even wait to cash it on that occasion.

In addition, ladies and gentlemen, you recall the evidence was that on one occasion Chester arranged a sale with Stein of $28,000 worth of Stern-Haskell stock in New York along with Mr. Reynolds and if you follow the documents, ladies and gentlemen, you will se that sale occurred, according to the B'Noth Jerusalem records, on June 6 of 1969.

On June 9, 1969, ladies and gentlemen, what happened to Mr. Chester's bank account? A nice big deposit of $10,000 in that bank account, that is what happened, ladies and gentlemen. So the Government submits that Mr. Chester actually gained a great deal out of the transaction.

In addition, he stood to gain a great deal more, because it was also established that Mr. Chester had 58,000 shares of Stern-Haskell stock that he did not sell.

You see, Mr. Chester, the evidence established, was admitting that stock that was really in his name was actually control stock and couldn't be sold. We introduced testimony given on a prior occasion where he admitted that fact.

So what he chose to do was sell the stock out in other names so he could get some immediate profits and hold on to that 58,000 shares of Stern-Haskell stock.

Well, ladies and gentlemen, think about what would have happened if this manipulation had been allowed to go on even longer and if that stock, if Chester had been able to eventually sell that stock for $5 a share or maybe $10 a share, ladies and gentlemen, start multipling that by $58,000, and you start to see the enormous profits that Chester had to gain from just setting up this one little shell company, this little piece of paper down in Florida, and he was going to get 58,000 shares of Stern-Haskell stock, and then, ladies and gentlemen, after you have multiplied that out for a minute, think about the fact that Chester did it not once, but three times, and he set up the Mobile Home Ventures transaction, which we wouldn't count, because the evidence never established that that actually started to trade, but what about Diston?

Chester got 58,000 shares of Diston stock and he told Mr. Disner that would come on the market at $1.50 to $2 a share. Multiply that by 58,000 and you start to see the profits he was going to get and you very rapidly approach figures in excess of $300,000 and it begins to look like a half million dollars would be in Mr. Chester's kick if this swindle had been successful, and that is not a bad day's work.

MR. CHESTER: I object. He is talking about

possibilities and why don't we talk about the evidence?

What I could have made -- I don't mind him saying when I got checks that are endorsed, in other words, but when he says if this happened or if that had happened -- he can't speculate on closing, he has to talk about the evidence. He can do inferences but not speculate.

It was testified to I gave Diston his stock back.

THE COURT: Mr. Chester, we are in the course of a summation and the Government's lawyer and defense counsel and you will be able to comment upon the evidence.

MR. CHESTER: And speculate? As long as I know the rules, fine.

THE COURT: That is a comment on the evidence.

Proceed, Mr. Wohl.

Please try not to interrupt--

MR. CHESTER: As long as I know the rules so when I get up he doesn't jump to his feet every minute. When I get up, I don't want him to get up.

THE COURT: I have said that the rule is that in summation a lawyer is permitted to comment upon the evidence.

MR. CHESTER: But this is not the evidence, Judge.

THE COURT: Proceed, Mr. Wohl.

MR. WOHL: Ladies and gentlemen, so that it is clear, the Government submits to you that the evidence very clearly was that Mr. Chester got 58,000 shares of Stern-Haskell stock, he got 58,000 shares of Diston Industries stock, and you may infer that he got 58,000 shares of Mobile Home Ventures stock because that spin-off occurred between the other two and it was established that at that time he owned 11[illegible],000 shares of National

Ventures stock. So you know he got that.

It is true, ladies and gentlemen, the Government never did establish that Mr. Chester actually sold that stock, but you can draw one of two inferences: Either Mr. Chester was getting that stock so he could paste it on his bar and use it in his house to make paper airplanes or he had some ideas that eventually he was going to be able to sell that stock and that is what he testified in the prior testimony that was read to you and the Government submits, ladies and gentlemen, that it is an entirely reasonable inference for you to draw based on your own common sense and your knowledge of human nature that the reason that Chester was going through with this entire transaction was because he stood tomake profits that any ordinary human being could only describe as enormous profits.

Let's look at some of the other defendants here. What about Mr. Reynolds?

You saw how immediately he sold an appreciable number of this stock, approximately $4000 worth of Stern-Haskell stock, right off the bat.

In addition,you saw that his parents sold approximately $6000 of Stern-Haskell stock --

MR. KEEGAN: Your Honor, please, his parents are

not on trial. What are we on, Chinese law?

THE COURT: Mr. Keegan, you are not to jump up like that during the Government's summation.

I have told the jury that it is their recollection of the facts which govern.

MR. KEEGAN: All right, your Honor.

THE COURT: And he is permitted to comment on the evidence, as you well know.

MR. WOHL: Again, ladies and gentlemen, if you wish, you may infer that Mr. Reynolds' parents heard about Stern-Haskell stock because it was in some way reported in the Wall Street Journal that Stern-Haskell stock was going to challenge IBM for lreadership in the corporate world.

On the other hand, you may also infer, ladies and gentlement, that the reason they were selling that stock was because they heard about it from Mr. Reynolds and Mr. Reynolds, this financial consultant, who was controlling the stock activities of Marinus Laboratories, was also advising his parent it might be a good idea to get some Stern-Haskell stock and sell it.

What about Levine and Wax, ladies and gentlemen? I have already explained to you that they, the evidence shows, received approximately $50,000 in kickbacks as a

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result of their activities in the marketing of Stern-Haskell stock.

What about Michael Gardner? Gardner, you recall, received $50,000 in the process of this loan that was based on use of Stern-Haskell stock as collateral.

That leaves Mr. Haskell, ladies and gentlemen, and I think the evidence has been undisputed that Mr. Haskell did not sell any Stern-Haskell stock. The Government has never attempted to show that he did sell Stern-Haskell stock.

However, ladies and gentlemen, we submit that you should not overlook what Mr. Haskell's interest in this whole proposition was.

You recall the evidence was that Mr. Haskell had 320,000 shares of restricted stock. Indeed, his counsel even introduced that stock into evidence.

Can't you figure out, ladies and gentlemen, that if Stern-Haskell became a publicly traded stock and went up to $4 or $5 per share, even if Mr. Haskell couldn't sell that stock, if he could use it to obtain some kind of package loan, properly disclosing that his stock was restricted, or waited to sell it in the future, after four or five or six years, look at the enormous profits he is going to make, when you start to multiply 320,000 shares by

$5 a share, particularly in a company in which the entire stockholders' equity is a deficit. That's pretty nice profits, as well.

You recall also the evidence was that Mr. Haskell originally entered the transaction out of a desire tomake profits on the sale of the stock and he was later on told he could not do that and therefore he didn't actually get any of those profits.

Ladies and gentlemen, to a large extent what I have been describing to you is some of the profits that were in fact realized and some of the profits that were really hoped for by some of these defendants if this scheme had been entirely successful. But it was not successful, ladies and gentlemen, and the firest reason why it wasn't successful was because it was detected, because we are even here, the scheme was not successful.

One thing you have to recognize right at the outset is that a stock fraud is not like a bank robbery, or that type of crime, where everybody knows that a crime has been committed, and the only question is the "who-done-it" type of question.

That is not the real problem in a stock fraud. The reasl problem in a stock fraud occurs right at the beginning: Did a crime occur? If a fraud is really

successful, nobody knows it occurred because it was entirely designed to avoid detection and the investor who buys Stern-Haskell stock and then watches his money or her money go down from $4 to $3, to $2 to 75 cents, that investor doesn't know he has been defrauded.

He thinks, "Well, gee, those are just the breaks. I guess I made a bad decision and the stock market is a chancy thing and my stock went down."

The investor doesn't even know that he didn't get an even break, he doesn't know he didn't get a fair chance because that stockbroker wasn't telling him to buy that stock because he thought it was a really good stock; he was telling him because he is getting an extra cash payoff for selling that stock which he is not going to get if the investor buys another stock.

You start out with the observation that of course this was not an entirely successful fraud. How do we establish that a fraud occurred?

Ladies and gentlemen, the only what you can establish that a fraud occurred, particularly this type of fraud, is by collecting here in one place all of the information that the people who put the fraud together had never expected would be collected or assembled in any one place or in any one mind.

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You compare the appearance that they tried to create with what the truth in fact was, and the Government submits that when you do that in this case you come to the conclusion that there was a rather crude fraud in the sale of Stern-Haskell stock.

You come to the conclusion that although they tried to create the appearance that Stern-Haskell stock was being sold to the public at a natural price determined by supply and demand, it was really a controlled price, and although they tried to create the appearance that it was in some way exempt from the registration requirements, it wasn't really exempt from the registration requirements at all.

Now, if you expected to accomplish this at the beginning of the case by hearing testimony from a policeman or other kind of law enforcement officer who could tell you the entire fraud from start to finish, ladies and gentlemen, you must have been certain surprised and I think you can see now that that is not at all possible in this kind of situation.

The reason that it is not possible is because this crime occurred in so many different places, as I described before, including not only the various amounts and houses but at various brokerage firms, at the Blank

Furniture Company in Miami, at this bank up in Montreal, a lot of different locations.

In addition, there are a great number of participants.

In addition, the Government submits that what really happened here was a very simple thing, it was just an ordinary underwriting and that Stern-Haskell stock was merely taken down to Wall Street and sold out to a number of public investors, but the defendants, ladies and gentlemen, have attempted to camouflage what happened by breaking it up in a lot of little transactions, running the stock down to Florida and bringing it back up, running it through New York Stock Exchange firms, when they didn't have to, they could have just popped it into Lockwood's office and that would have been much more direct.

The proof operates by putting everything back together after the defendants attempt to take it apart and the Government submits the reason they fragmented the proof was to fool the SEC, to fool the investors, and ultimately, ladies and gentlemen, to fool any jury that might be called upon to render judgment in this case.

So the proof involves putting together a number of little pieces and that is why the Government called over 35 witnesses in this case and introduced over 400 pieces

of paper into evidence.

But when you look at this evidence in light of your common sense, ladies and gentlemen, the Government submits that youwill be able to put it all together.

At the beginning, when you are starting to put it all together, we submit there is one observation you should make at the very beginning, and that is that although many of the witnesses who were called were denominated in this trial in our legal proceedings as Government witnesses, that you must recognize that these were witnesses who were really the friends of the defendants, the associates of the defendants.

In many ways they were defendants' witnesses because the defendants chose these witnesses.

For example, ladies and gentlemen, the Government called Sten Nordin. Now, it wasn't the United States of America, ladies and gentlemen, that made Sten Nordin the head of Stock Transfer Agency. It was not the United States Government which installed Sten Nordin as the president of Calculator Computer Corporation, some other public corporation that it would be interesting to see how effectively he managed.

In addition, it was not the United States Government that installed Sten Nordin as the secretary of

National Ventures.

That was Bill Chester that did that, ladies and gentlemen, and the Government submits that there is a very good reason why he did that, because Nordin was the type of person that Chester could manipulate, that he could use and would go out and do whatever Chester told him to do regardless of any of the finder points that might have occurred to someone else, that perhaps some of these things should not be done.

How long did it take you, ladies and gentlemen, to figure out that Sten Nordin was a particularly capable person and if he was a stock transfer agent running a stock transfer agency by himself, that he was sort of over his head, let alone if he was the president of a public corporation or even the secretary of a public corporation.

Mr. Chester very effectively demonstrated that in the cross-examination of Mr. Nordin.

Why did he demonstrate it? Because he knew it already. You can't be with Sten Nordin more than an hour without figuring that out. He was someone that Chester chose for a purpose.

Also look at the witness Saul Weitzman, ladies and gentlemen, another person used as a nominee by the defendants and chosen by the defendants for that very

purpose, ladies and gentlemen, who then turned on the defendants when he became suspicious of Rubinson and Feiffer and Stein and then actually made some of the tape recordings that you heard introduced in evidence in the trial.

The same applies to Larry Hochen, a certified public accountant,who it would appear acted in a capacity very close to a nominee in this case, although he still claims that he didn't really know he was a nominee.

In addition, you had Sidney Stein and Philip Kaye. They were, again, people chosen by the defendants, ladies and gentlemen, because they couldn't operate a market, they couldn't make Stern-Haskell stock go up, no matter how hard they tried, if they were going to give the public investors a fair shake and what they needed was a fellow like Stein who knew how to make it go up and a fellow like Kaye who could go out and tout the stock for Wax and Levine, and bring those customers in and get them to buy that stock.

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So you have to evaluate all of the proof in light of the types of witnesses that the Government is required to call in this type of case, and recognizing that those are witnesses selected by the defendants.

Lawyers often call it summations, or lawyers' speeches are called summations, and so I would like at this point to summarize the facts for you and see if we can put it all together in a manner that is in a chronological sequence.

First of all, you recall Chester -- the first proof was in 1968 when we have Chester and Rubinson setting up a Stock Transfer Agency down in Florida.

The next thing that happens is that Chester and Reynolds set up a shell company.

The testimony was that Reynolds was the one who actually brought in this shell company. It was known as Toy King. And that it was put into Chester's name.

Apparently Toy King had been defunct since 1962. Incidentally, there are exhibits in evidence which give you a good bit of this corporate history, so I am not going over it in great detail

In any event, the evidence id clear Toy King had been defunct since 1962 and really in 1968 all Toy King was was a piece of paper, or several pieces ofpaper, perhaps.

In any event, Toy King was brought in by Reynolds. Chester or someone apparently decided that Toy King didn't sound like a good name to start spinning out the stocks so they changed it to National Ventures that had 400,000 shares outstanding of which Chester owned 345,000 shares.

The evidence was very clear, ladies and gentlemen, that Natinal Ventures had no business whatever other than avoiding the registration requirements of Section 5 of the Securities Act of 1933.

They attempted to put in some land into National Ventures, ladies and gentlmen, and the assets and balance sheets of National Ventures are in evidence and does say there is land there evaluated at a certain figure.

But you will recall that National Ventures didn't really own that land at all, that was a fraud just like a lot of the other things in this case.

Mr. Moore testified that Chester never paid for that land. All he did was give him a down payment, and they were attempting to clea the title. The title never was cleared, and Chester never became the owner of the land.

So to the extent that anybody thought that National Ventures was reasly a real estate company, as Mr. Stern testified he had been told, they were really

fooled, because the company didn't own the land in the first place, and Chester knew that it didn't own the land at all. He just put that in thers to give it the appearance of having some kind of asset, the Government submits.

Then you will recall at the beginning there was an attempt to do another deal called Scandia, but that didn't work out and we come to the Stern-Haskell transaction.

You will remember the testimony from Mr. Stern was that he and Mr. Haskell had been talking for some time about the fact that they would like togo public,because they had cash problems.

You will recall he testified there was a difficulty that their checks didn't always hit the bank at the right time and so sometimes they would be bouncing checks or having difficulty getting their checks to clear and they felt going public would give them some assistance in their cash situation.

You will recall Mr. Hochen also testified when he initially looked at Stern-Haskell he recognized immediately there was a shortage of cash.

Then you recall after the discussion got going that there was also the suggestion that if they were a public company possibly Stern-Haskell could even make some

acquisitions of some sort, but you remember no acquisitions were ever made and the Government submits you may well find that this acquisition talk was nothing more than the pipe dreams of Mr. Stern and Mr. Haskell that never really amounted to anything at all.

You will recall the proof was also very clear that Stern and Haskell and everyone else in this case knew that in order to become a public company, it was necessary that the company make full disclosure to the investing public through a prospectus or offering circular of some sort sothat the investors, as Mr. Pardee from the SEC put it, have the basic information that a reasonable, prudent investor ought to know about a company.

So they at least have a fair chance and everything doesn't go by rumor and speculation.

In fact, you may find it interesting, ladies and gentlemen, if there was any doubt in your minds as to what a prospectus really is, to look at the Marinus Laboratories offering circular that was introduced by the defendant Reynolds; you will see that that is a printed pamphlet that includes a lot of information. And that offering circular was not even a full prospectus.

You will recall that was just introduced or put in under this special exemption obtained by Marinus

Laboratories under Regulation A.

In any event, that would show youthe kind of information that investors were entitled to, and that investors did not have in the Stern-Haskell transaction.

Of course, you should also keep in mind the Marinus Laboratories offering circular was never cleared by the SEC, and that that offering never became effective either.

In anyevent, the evidence was clear that normally it would be required that Stern-Haskell put out certified financial statements, that it tell the public what it was going to do with the proceeds of this offering in writing, that it give a description to the public of what its business really was, that it was a used car garage up in the Bronx.

That's what it was.

And not that it give the public all of this fluff about closed circuit television sets and they are going to become the next manufacturer of certain kinds of auto - mobiles, and that sort of thing.

That they would have to make it very clear that they had not done anything in writing on that score if they were going to talk about that in any disclosure to the public.

They would also have to disclose what their underwriting arrangements were which were never disclosed in this situation, so that any investor who wanted to find out about Stern-Haskell stock would be able to call up his broker and the broker would be able toget it either from the prospectus or the broker would be able tofind a place where that prospectus was reprinted.

The next thing that happened after Stern-Haskell d-cided this kind of method of going public, the ordinary proper method, was too expensive for them, they started to hear from Mr. Rubinson and Mr. Stein about this new method of going public, or this other method of going public called the spin-off.

It had some very interesting features to them. First of all, they didn't have to make any public disclosure.

Secondly, although the public would think this was a public corporation really the corporation isn't going to get any of the money at all, the money is all going to go to the promoters and the fellows putting the spin-off together as I described to you a moment ago.

They are not going to have any certified financial statements.

Basically, Stern-Haskell is going to do all right because although they are not going to get any money

they might be able to make these acquisitions. Stern is going to get 320,000 shares and the market is going to go to $5. Haskell is going to get 320,000 shares and that would be good, too. The only losers would be public investors.

In all the evidence you heard you never heard anybody express any concern about public investors.

Haskell goes down to the meeting on February 8, 1969 in Florida, and initially there are discussions with Rubinson and with Stein and possibly Feiffer was present as well, we don't know. In any event, ladies and gentlemen, it is clear from three witnesses' testimony that at this meeting at the Blank Furniture Company in February of 1969, the exact date was established by Mr. Hochen's diary entry, that a number of the defendants were present. There was Feiffer present, Rubinson was present, Chester was there, Haskell was there.

In addition, Mr. Weitzman was there sort of in and out and Mr. Hochen was there. It was clearly set out at that meeting, ladies and gentlemen, or at least on that day, that they were going to go through with this spin-off transaction, and that Mr. Stein and Mr. Rubinson didn't -- although they were obviously very involved in the transaction, they were going to be very, very concerned

about it, and participate in it very mcuh-- they didn't want their names to be used, and they didn't want their names on any papers. So there were going to be nominees.

You will recall the testimony was that Weitzman and Silber and Feiffer immediately agreed to be nominees. Hochen testified that those were the only three, and that he didn't agree to be a nominee but Mr. Rubinson forced him to be a nominee.

Mr. Weitzman testified Mr. Hochen did agree to be a nominee on the spot.

In any event, the Government submits it must be perfectly apparent that indeed these nominees were used.

It should be perfectly apparent to you ladies and gentlemen that the defendants who appeared at that meeting certainly knew that these nominees were in the Stern-Haskell transaction.

Certainly Mr. Feiffer knew it, certainly Mr. Rubinson knew it. They talked about it a great deal with their colleagues.

What about Mr. Chester, ladies and gentlemen? If you look at all the exhibits that have been introduced in evidence bearing the date February 13, 1969, what do you find? You find that Mr. Chester wrote these identical letters to each of the nominees saying: I understand

you want to buy National Ventures stock. Here's how you can buy National Ventures stock. And you have to sign this option agreement giving Chester the right to buy all the National Ventures stock back if he wants to, and you also have to sign this investment letter.

Each of the nominees signed these things and sent everything back.

A nice little pattern there that the Government submits you may well find indicates beyond any doubt whatever that Mr. Chester, who seems to be a fairly intelligent individual anyway, certainly knew that these nominees were being used in this particular transaction.

It was also agreed at that meeting that National Ventures was going to appear to buy Stern-Haskell stock. It was going to pay $5000 to buy that Stern-Haskell stock. It was going to pay that money to Stern-Haskell.

You will recall Mr. Hochen also testified at that meeting there was some concern about the market. They were not thinking, ladies and gentlemen -- well, we are going to do this spin-off and maybe there will be a market and maybe there won't, we just don't know. They knew there was going to be a market, ladies and gentlemen.

You heard Mr. Hochen testify that he knew there was going to be a market, and that Mr. Stein at that very

meeting said that they thought the stock would go to around $5 a share.

As that meeting ends with the nominees having been selected and the basic deal set out, Haskell reports back to Stern and tells him the National Ventures deal was set up for $5000, and he doesn't tell him, however, about these nominees, which the Government submits would have been some very interesting information for Mr. Stern to have at that original time.

Then the next thing that happens, ladies and gentlemen, is that they come up to New York, at least Rubinson and Feiffer and Stein come up to New York.

You will recall they are traveling back and forth every week in their method of operation.

The actual agreement is signed between Stern-Haskell and National Ventures. And that agreement doesn't say anything about these nominees either.

Then, ladies and gentlemen, they go to Irwin Germaise, and they get a legal opinion.

Who is Irwin Germaise? You will recall he is an attorney that Mr. Rubinson told Mr. Weitzman about. Rubinson likes Germaise because Germaise would sort of go out on a limb to help him out if they really need an opinion.

The Government submits that even on this occasion, however, that the opinion of Irwin Germaise, and I am going to go into that in more detail later, was a clear warning to these defendants that what they anticipated doing was certainly a violation of the Securites Act and that they couldn't do it.

The next thing that happens, and it is in very short order, ladies and gentlemen, is that they recapitalize Stern-Haskell.

You will recall it had something like 32 shares owned by Stern and 32 shares owned by Haskell and 16 shares owned by this other fellow Magassis. They recapitalize it so that Stern-Haskell leach have 320,000 shares now. Then they select the Stock Transfer Agency in Florida.

The Stock Transfer Agency goes out, and Nordin or Chester or someone goes out and gets the stock printed up.

In March of 1969 they create the appearance, and this was interesting, ladies and gentlemen, the appearance that Stern-Haskell is actually selling to National Ventures some stock.

You will recallwhat happened on that situation as it was described to you by Mr. Stern and by the bank

officer, Mr. Myrtetus.

Was there any real sale of stock there at all, ladies and gentlemen? Obviously there wasn't any sale of stock. That was a completely phoney transaction.

What happened? Mr. Haskell comes back to Mr. Stern and he says, "You know, we are suppoed to get the $5000 from Stern-Haskell. We have to give Chester $5000, that is a legal fee."

So the two checks are just going to go past one another in the night, like two trains. But it doesn't even work that way, ladies and gentlemen, because you recall that all that really happens is that Stern-Haskell takes money out of its account, sends it down to Florida, and gets its own money back again.

How did that happen? Chester issued a check to Stern-Haskell, $5000, and that check bounced. Next on March -- that was issued on about March 6th or 7th, I think.

The next thing that happened was on March 13th Stern-Haskell writes its check down to Chester. Chester takes that check for $5000, takes $3500 out of that bank account, its own bank account, and switches it into the National Ventures bank account, so that now the Stern-Haskell check will clear.

What is the check to Stern-Haskell clearing against? It is clearing against the very money that Stern-Haskell already sent down there. They are getting their own money back again.

So all that happens is the money is going around in a circle to give you, ladies and gentlemen, to give the SEC and any other observers the impression that there is an actual arm's length transaction going on here and somebody is selling somebody some stock.

In case you think that is an accident, that it just sort of happened that way, ladies and gentlemen, note the fact that in the Mobile Home Ventures transaction exactly the same thing happened and in the Diston transaction a similar thing happened.

In both situations there were two $1000 checks, one going up from National Ventures to the other company, and Diston or Mobile Home Ventures sending a check right back to Chester again.

I think in the Mobile Home Ventures transaction the checks bounced and it was exactly the same. In the Diston transaction it appears that Chester had finally realized enough money so he was able towrite a good check, at least.

Then we get to March 7. This is before National Ventures is even paid for this stock, they give that dividend announcement which is in evidence and you have heard referred to a number of times, saying that National Ventures is now the owner of this stock, and they are going to declar a dividend.

In April that dividend is in fact declared. The appearance is suggested, ladies and gentlemen, by the idea that they are declaring a dividend, that the people who are going to get Stern-Haskell stock are all of these little shareholders of Toy King, this former five and dime company, or whatever it was down there in Florida -- they are going to get this stock and they are just going to be delighted.

Well, ladies and gentlemen, when you look at the real facts you find out that they are not the people who are getting the stock at all. Maybe a few of them got some stock, but what did the evidence show? It showed that Chester got the stock. It showed that the nominees, Rubinson, and Feiffer, and Stein, got the stock. It showed that McKaye, who was another nominee, got the stock. It showed that Marinus Laboratories, a company headed by Mr. Cairnes, who doesn't really know anything about any of these stock transactions, but really the financial -- run by Reynolds from the financial point of view, got that stock.

Chester got 58,000 shares. The nominees, who put the stock into the name of Lockwood, or from whose stock it went into Lockwood, got 75,000 shares. 18,750 went to McKaye and 10,000 to Marinus Laboratories.

So out of this 200,000 shares over 150,000 went right back into the pockets of the defendants here and their colleagues, ladies and gentlemen.

In addition, you might also recall the fact that there was a substantial amount of evidence that Chester sought to increase the number of shareholders of National Ventures.

What was the evidence on that? You will recall Nordin testified that Chester was down and just giving away stock so he could increase the number of shareholders because he thought that had something to do with the appearance of the transaction.

Hochen testified that when he was asked to buy National Ventures stock, that he was asked not to put it in his own name but instead Chester said he wanted it put in the name of eight or nine or ten other people, in order to have more shareholders.

In addition, Reynolds' stock was not held in his name, but in a number of little trusts for a number of his relatives as well.

In addition, ladies and gentlemen, you will recall there was a stipulation entered into that gave a long list of people that Chester admits that he gave stock to who never paid for it, never asked to receive that stock.

What did Stein testify to on this subject? He testified that he was told that National Ventures, this former Toy King, had about 70 or 80 shareholders, and they are going around representing it has about 800 shareholders, ladies and gentlemen. That is how they expanded the list of the shareholders of that company.

You can verify it for yourselves by looking at the records of the company. You thumb through those transfer records, ladies and gentlemen, and what are you going to see?

You are going to see all these people, these men and women in their with five shares, ten shares, five shares, ten shares, maybe 50 shares every once in a while. But, the only people who have any really large blocks of stock are the people listed on that chart there and the other chart below it, ladies and gentlemen, who are the defendants here on trial, and their colleagues. That is where the stock went.

The Stern-Haskell stock is not doing any good down in Florida, so the next thing that happens is that it

has to be brought up to New York, because they want to sell it out through the public market.

You will recall the evidence was -- in fact, you have seen these stock certificates for yourselves -- the evidence was that all of this stock was put into the name of Lockwood and Company down in Florida.

The next thing had to happen was that it all, every share, had to be endorsed by Ben Malmeth of Lockwood & Company. You can imagine, ladies and gentlemen, that was a huge job. Look at this --

MR. ANDREWS: Objection, that is not the record. That is not the evidence.

THE COURT: Haven't I already told the jurors that if what Mr. Wohl says does not accord with their recollection that their recollection governs.

MR. ANDREWS: I understand, but it is a clear misstatement of a very crucial fact. The evidence is that only half of those stocks, not even half --

THE COURT: I have told the jury that they have heard the evidence.

MR. ANDREWS: Yes, your Honor.

MR. WOHL: Ladies and gentlemen, you have the stock certificates in evidence. I am standing here thumbing through them, and there is an enormous number of them, and

I don't see any here that are not endorsed, but if you want to look at them for yourselves you can see that basically what happened was all of the stock was endorsed by Ben Malmeth.

This is the hundred share lots. You will recall Nordin testified when you want to have the shares easily negotiable you have to have them broken down.

How did they get endorsed by Ben Malmeth? Stein testified it was taken care of by Feiffer and by Rubinson and that they paid Malmeth off a little to get him to endorse the stock to make it fully negotiable.

Is that corroborated? It certainly was because you will recall there was a stipulation in evidence that a number of these stock certificates bear the writing on the back of Mr. Feiffer where it says Lockwood & Company.

And so that certainly demonstrates that Mr. Feiffer was involved in that particular series of transactions.

Also, you will recall Weitzman and Stein both testified that their recollection was that Rubinson was the one who had brought the stock up to New York in a little black bag, or a big black bag, similar to one of these Mr. Grimes has his feet on here.

So, ladies and gentlemen, the stock gets to New

York. Right now I would like to pass out the charts that we originally put into evidence, because there are a few references that I want to make to those.

Now, ladies and gentlemen, first let's turn back to Exhibit 671. You will recall that one is the pink sheet chart. That shows how the market in Stern-Haskell stock was created. It shows that the market was started by Michael Gardner, who filed a listing application on April 14, of 1969. The Michael Gardner securities firm did.

What else happened right about that same time? Right about that time, ladies and gentlemen, Mr. Haskell and Mr. Gardner entered into an agreement that Mr. Gardner was going to buy 5,000 shares of this stock at 10 cents a share, ladies and gentlemen. He is getting it at 10 cents a share, the investment stock from Stern-Haskell.

What's he doing as far as the public is concerned, ladies and gentlemen, is the public getting it at 10 cents a share? No. Mr. Gardner is giving it to the public at a price of approximately $1 a share, or at least he is offering it to the public at a price of $1 a share.

What happens next in the public market, ladies and gentlemen? He starts on the 16th, and you can follow right along there. The price goes up 50 percent on the 21st of April. Then after that on the 22nd of April it goes up

to a 3 bid 5 asked price. That is a hundred percent increase right there.

And then on the 23rd, it settles back down to a 2 bid 4 asked price.

And that's how the price initially gets up to the 2-4 area.

Now, while we are looking at this, ladies and gentlemen, I would like you to turn over to July and notice that Mr. Gardner goes into the pink sheets again on July 18 of 1969.

Now, what else happens concerning Mr. Gardner in July of 1969? That is when he actually gets his Stern-Haskell stock at a price of 10 cents a share, where he is quoting it at 2.50 to 3.50. And you have in evidence his letter of July 14, 1969. The Government is going to go back to this later, ladies and gentlemen, the time corresponds here between the time that Gardner is in the pink sheets and the time when he gets his free stock -- or cheap stock, excuse me, from Mr. Haskell.

I will be referring to that later.

You will recall Mr. Stein testified that there was an initial understanding that Gardner was going to do everything a broker normally did in return for getting this investment stock. You will recall that right after that

apparently Mr. Stein does whatever a broker does ordinarily to go to the pink sheets and raise the price of the market in the stock.

In any event, that's what Mr. Gardner did. That could be something Mr. Stein didn't know about, it also could be something he didknow about. We don't know.

In any event, Mr. Stein concludes that Gardner is not getting results, and so he goes to Lockwood and he talks to Larry Levine. He talks to Levine and Levine agrees that they are going to see if they can raise the price to about $4 a share, and Levine is going to get a kick back of approximately $1 a share for all of the stock that he sells through Lockwood & Company.

You will recall Stein also assures him at that initial series of discussions that he, Stein, has the box in the stock. What does that mean? That means that he controls all of the supply of the stock so there is not going to be any problem in that somebody else is going to start selling into the market after Levine has it up a little bit, that somebody else would come in and start selling and foul up the market.

So we have it clear at the outset that Levine has control of the stock.

They also agree the stock is going to come through a New York Stock Exchange brokerage firm because they don't want any problems with the registration status of the stock.

In addition, you will recall it was said by Mr. Stein that they had several meetings, and in those meetings not only Stein and Levine were present, but also Wax was present, also Feiffer was present, and also Rubinson was present, discussing what the basic arrangement was going to be, which was that Stein and Feiffer and Rubinson were going to pay a kick back to Levine and then Levine was going to be taking care of however the retail market was going to be created.

That was a basic problem that Levine had at this point, is who is going to buy the Stern-Haskell stock, because it is not going to do him any good to buy all the stock unless he can find somebody that will buy it from him?

So you heard how he solved that problem. The defendant Phil Kaye came in and testified that he was recruited by Wax and Levine to go out and tout the stock, and he was told that he would get a kickback as well of a few -- of a certain number of cents a share for all the stock that he was responsible for selling.

You will also recall that Wax, one of the people in the original underwriting, was one of the major

brokers who was selling the stock. So that was another way that they could keep retail buying, ladies and gentlemen, so they could get some investors in to buy that stock and take it off their hands.

Basically, at this point it is all set. Kaye is out recommending and touting the stock. Wax is recommending it to his customers. Levine has got the box, or in control of the stock, and he is in contact with Feiffer and Rubinson and Stein at the 72nd Street apartment.

You can see, ladies and gentlemen, that it all worked just the way they said it was going to work, it worked just like a charm.

Let's turn to May 21 of 1969, and there is one of the clearest examples of how you can see that this scheme operated.

You see on that particular day is not the first sale by Feiffer. Feiffer has previously sold some stock to Lockwood so that they would be able to make deliveries of stock that was bought by customers recommended by Stein. But on May 21 is the first time that A. T. Brod & Company, and that is Walter Wax, you will recall, he is a broker at A. T. Brod & Company, that A. T. Brod & Company starts buying Stern-Haskell stock.

What else happens? F. M. Mayer starts buying

Stern-Haskell. You will recall Kaye testified that is one of the brokers he talked to. Isn't it a coincidence, ladies and gentlemen, that at that same time Feiffer starts selling Stern-Haskell stock. That pattern continues to May 21, May 22, and on through the end of May and the beginning of June.

Both starting at about the same time.

There is another thing that I would like to invite your attention to, ladies and gentlemen, and that is you will recall Kaye testified that at one point Levine indicated to him that he was aggravated because Stein was selling too much stock, and Levine didn't want to be holding this stock.

So Levine told Kaye that he complained to Stein about this and Stein brought the stock back from him. Is there any verification of that? The Government would submit there is.

Look at May 22, and what do you see there, you see B'Noth Jerusalem, which is the organization that was very closely associated with Sidney Stein, coming in and buying 2,000 shares of Stern-Haskell stock at 3-3/4 from Lockwood & Company out of their trading account.

The Government would submit that that is the transaction that resulted from the conversation that Mr. Kaye was telling you about.

In addition, ladies and gentlemen, you will also recall Mrs. Nelson's testimony that on this transaction by B'Noth Jerusalem that Lockwood gave B'Noth Jerusalem favored treatment and that on all the transactions of Feiffer with Lockwood, that Feiffer got favored treatment for what the other investors got from Lockwood, thereby corroborating what the witness' essentially testified to, which was the very close relationship between Lockwood and the Feiffer account.

So, in any event, ladies and gentlemen, during this first phase of the major trading that was described to you by Mrs. Nelson, a total of about 55,000 shares of Stern-

Haskell stock were sold. Over half of those shares, ladies and gentlemen, were sold to customers of Walter Wax at A. T. Brod & Company. So he is the major -- major -- broker responsible for selling this stock to the investing public. The total gains to Feiffer, in Feiffer's account, approximately $158,000, ladies and gentlemen, in a number of these checks that have been introduced into evidence, and you recall the stipulations are that on a number of them, the vast majority of them, in fact, the endorsements on those checks, are endorsements by Albert Feiffer, demonstrating that he got the money, either in his own name or as Security Research Consultants Corporation or on a couple of the checks there are these Swiss bank endorsements that we have only limited evidence about.

THE COURT: Mr. Wohl, do you want a recess at this time? You have been speaking for exactly one hour.

MR. WOHL: That would be very good, your Honor. I would appreciate it.

THE COURT: At this time we will take a ten minute recess.

(Jury leaves the courtroom.)

THE COURT: Before we recess, I don't want any other lawyer or a defendant representing himself jumping up and interrupting Mr. Wohl's summation for the jury.

If Mr. Wohl says something which you think should be taken up with the Court, it will be taken up after he concludes his summation and out of the presence of the jury. We have had that happen this morning, on the part of Mr. Keegan, Mr. Chester and Mr. Andrews, each of whom knows better than to interrupt a summation by saying that the U. S. Attorney has misstated some fact. That is highly improper and it will not continue. The next laywer who does that, the next defendant who does that, is going to be held in contempt of Court, and I mean that, Mr. Chester.

So don't stand up and say anything right now. You do that one more time --

MR. CHESTER: I understand that.

THE COURT: I have told you before you were going to be held in contempt of Court --

MR. CHESTER: Judge, I heard you, I heard you.

THE COURT: -- but this interruption of a Government summation on those improper grounds will not happen again.

MR. CHESTER: May I say something now, Judge?

THE COURT: Yes.

MR. CHESTER: I have said on the record earlier, after the Judge told me he could say what he wanted, I said that if this applies to the United States Attorney

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when I start summing up if he jumps up every five minutes, does this apply to him also, Mr. Wohl, the same thing you are telling us?

THE COURT: I told you yesterday that the Government was bound by the rules like everyone else.

MR. CHESTER: Fine. I am not going to get on my feet any more. He can say anything he wants, but when he starts jumping up when I am closing, the rules apply to him also.

THE COURT: Mr. Higgins, you have a right to confer with your client, but you are to keep your voice down. Your client doesn't have the right to sit there and communicate with his wife or his friends who come into Court.

Now, that has happened throughout this case and it is to stop, and that laughing and giggling is to stop, and that applies to you also, Mr. Levine -- pardon me, not Mr. Levine, but Mr. Andrews, this smiling, knowing smiling and communication is an indication to the jury. During Mr. Wohl's summation he said something that happened to Levine, and you had a great, big, broad, knowing grin on your face. That is a communication with the jury and this grinning is also to stop on the part of lawyers and defendants in the case.

Now, I don't want to look around and see anybody else grinning or laughing. There is nothing funny here. This trial is going to be conducted in an orderly and dignified way. As I said, the very next lawyer that jumps up and says something about Mr. Wohl's summation, like he is misstating the record, and I have already told the jury that -- if you want to make a motion for a mistrial based on anything he says, or something like that, you write that out or make a note, and we will take it up at the end, but his summation is not to be interrupted again.

MR. HIGGINS: Your Honor, I am sure Mr. Wohl would like to correct a particular fact he stated to the jury, that at the time Gardner got his allegedly cheap stock that he, Gardner, went into the sheets to make a market to sell stock to the public at a dollar, but in fact, Gardner Securities went in as a bid, not an offer. That is a misstatement of fact.

THE COURT: Then you get up and tell the jury that. I told the jury that would happen and it is their recollection that governs.

MR. ANDREWS: If your Honor please, may I address the Court on the question of that smile? I don't mean to communicate with the jury at all. It was a spontaneous expression of my client who is on my left, away from the

jury, at something Mr. Wohl said, which I found in the light of my understanding of the facts, to be astounding, and also beneficial, which your Honor will learn tomorrow when I sum up.

THE COURT: You don't have to let us know all about these great discoveries by smiling and grinning.

MR. ANDREWS: But I turned to my client, who is on my left, and not to the jury, with a smile. I am sorry, your Honor.

(Recess. Time noted: 11:15 a.m.)

(Jury present. Time noted: 11:25 a.m.)

THE COURT: Are you ready to proceed, Mr. Wohl?

MR. WOHL: Yes, your Honor.

Ladies and gentlemen, before the recess, I think I had mentioned to you that the evidence showed that Mr. Levine had a problem and he complained to Mr.Stein about it and that was cured by B'Noth Jerusalem coming in and buying some stock and taking it away from Mr. Levine, so he wouldn't have to hold on to it.

You will recall the evidence also showed that at another point, Mr. Levine made another complaint to Mr. Stein, and what was that? He said, Mr. Levine said, according to Mr. Stein's testimony, that he was getting selling in, coming from Florida, and you recall the original deal

was that Mr. Stein had told Levine that he had control of the box and so there wouldn't be any of this selling coming in, and Mr. Stein testified that Levine complained about that and said, "Hey, there is selling coming in and the deal is not working out the way you said and if you can't stop this selling, we are not going to be able to move the price up."

If you look at your charts, ladies and gentlemen, you can see that there indeed was selling coming in, if you start on Exhibit 670 and look down the sell side, and who is doing that selling? Besides the Lockwood Trading Account, it is coming out in the name ~~Roberts~~ thru Prudential Investment Company, in Florida, and you look at pages 1 and 2, and going over down to page 3, and then you start to see down toward the bottom, Milton Reynolds, he is doing some selling coming up from Florida, and later on, page 4, you can see Milton Reynolds again selling stock and it is all coming from Prudential Investment Company or A. G. Edwards, which is located in Florida.

Also in Prudential there is another sale by ~~Roberts~~ thru Prudential, page 4.

So you recall Mr. Stein testified that he checked this out and he talked to Mr. Rubinson and Rubinson told him, "Well, that selling has to be coming from Chester."

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And indeed it was coming from Chester through the account of Roberts and through the account of Reynolds.

So what did they decide to do? They decided Chester had to stop selling the stock. Stein testified that Rubinson had a conversation with Chester and Chester wanted to sell the stock. So they had to find some place to put that stock so that it wouldn't come out on the market because if the public market were hit with that number of shares, then a true market would cause that price to go down.

They had not only to increase the demand for the stock, they had to control the supply of the stock as well so that kind of stock would not come on the market. How did they do that? You heard Mr.Stein testify they arranged with Mr. Chester that he could sell the stock to B'Noth Jerusalem and that this was set up in a telephone conversation with Mr. Rubinson.

The evidence further showed that in early June of 1969 that that sale in fact did occur.

You recall that Stein testified that he set it up with two people representing B'Noth Jerusalem and when he put his guarantee on the deal B'Noth Jerusalem went along with it and agreed to buy the stock.

You recall there was also a stipulation that when Rabbi Weiss actually bought this stock, Chester and Reynolds were both present at B'Noth Jerusalem, in Brooklyn.

You recall also that it was stipulated that Reynolds brought the stock up from Florida to New York and that he actually delivered the stock out to B'Noth Jerusalem.

In addition, you have the check, which is Exhibit 215A in evidence, which gives you the date of this transaction, June 6, 1969, which is shortly after a lot of these sales had been coming in from Florida, according to your charts, in May of 1969, and the check is to Edgar M. Reynolds and it is in the amount of $28,125.

You look at the back of the check and it is endorsed by Mr. Reynolds and then it is deposited back into the B'Noth Jerusalem bank account.

You recall there was also a deposit ticket that was introduced into evidence showing it was deposited back into that account.

What does that mean? That means, the Government submits, that the check was actually cashed by B'Noth Jerusalem and that when Chester and Reynolds left B'Noth Jerusalem they either had cash or some other form of negotiable instrument that they got for that stock.

Incidentally, you will recall the stock itself is in evidence and here it is, all in the name of Edgar M. Reynolds and endorsed by Edgar M. Reynolds.

You will note this stock is all in 100-share certificates, and you recall Mr. Nordin's testimony was that the reason that the stock was broken down, when he was talking generally about stock handled by Stock Transfer Agency- that his understanding from Mr. Chester was that when you break stock down you want to make it more negotiable so that it can be sold to various numbers of people and if somebody wants to buy 100 or 200 shares, you don't have one certificate, ubt you have all these certificates.

The Government submits that is why you may well find this stock was broken down into all of these small certificates.

Then the question arises of what happened to the money after it was received by Reynolds and Chester.

The defense, for Mr. Reynolds, introduced into evidence his bank statements and they show that that money

was not handled as an ordinary person would handle his money if he just made a regular stock transaction; that it was not put into Mr. Reynolds' bank account, just in the same manner Mr. Reynolds didn't choose to take the stock to an ordinary broker and say: I want to sell stock and let it out over a period of time and handle it the way you think best. But he came to New York and took it to Brooklyn.

There is no showing that money went into Reynolds' bank account but there is a showing that some of it went into Mr. Chester's bank account, because on June 9, three days after the June check from B'Noth to Reynolds for $28,000 you have a deposit in Chester's bank account for $10,000, and what does it say on that deposit ticket?

It says "Loan from Ed Reynolds."

Well, the Government submits you may well find that wasn't a loan at all but, rather, that was part of the proceeds from this sale of stock up in New York.

What happens to that stock after it is sold by Reynolds or Chester to B'Noth Jerusalem? B'Noth Jerusalem holds onto it for less than two months and then starts selling it out into the public market.

Apparently they have now created a market where they can let the stock out and B'Noth Jerusalem starts

selling it out, and who does he sell it to?

If you look at your charts and turn to August of 1969 you will see who B'Noth Jerusalem is selling that stock to.

Let's look at August 22, 1969. B'Noth, through Granger, sells 13,500 shares at a price of 1-1/2 to Lockwood & Company.

Who is Lockwood & Company selling that stock to?

Well, isn't that amazing? They are selling it to A. T. Brod & Company.

Who is that?

That's Walter Wax' customers and you heard several of those customers say they started buying the stock again in August and the Government submits that is another very interesting coincidence that you may find was nothing more than a prearranged arrangement, that they had extra stock in B'Noth's account that they were holding off the market because the market couldn't absorb it in May and June and in August when they decided to get rid of it for a dollar, a dollar and a half a share, they go to the same customers again and get them to buy some more and these customers come in and buy more stock through Walter Wax' account and B'Noth starts selling it to them again.

You recall the testimony of Mr. Altschuler, who,

as I recall, did not indicate whether it was his idea or Mr.Wax' idea to average down, that is, to buy the second amount of stock.

Mrs. Dundish testified it was her idea, according her recollection, that she buy this stock.

Well, that is conceivable although the Government submits that even if it were her idea, Walter Wax' obligation at that time was to tell her: Hey, wait a minute, this is a manipulated stock and I am getting extra money for selling this stock.

That is what proper business practice should have been but, of course, it couldn't have been proper because he was getting the payoffs anyway.

In looking at it in light of your common sense you might look at the fact that Dundish and Altschuler and the other customers of Wax all start coming back into the market right about the same time and that might suggest to you that Ms. Dundish may be mistaken on that one little detail and it may well be they all came in at about the same time, in August, because of the fact that Wax was out telling them to buy again because certainly a number of his customers started buying the stock in August and where are they buying it from? From B'Noth Jerusalem.

There was another similar transaction, ladies and

gentlemen, that there was not a great deal of evidence about. In fact, most of the evidence came from the defense case, and that was the defense that was put on by Mr. Reynolds, and you recall there were a number of interesting similarities-- you see, in these situations where you have a prearranged plan, what you get are these recurring patterns, where things are supposed to look different but in fact it is the same thing happening, and that was the Marinus stock transaction; Marinus Laboratories selling 10,000 shares of Stern-Haskell to the account of Feiffer at the Central States Bank at $1.50, exactly the same price the Reynolds stock was sold to B'Noth for.

The Government submits you may well find that that was another of these stock transactions that was designed to keep the stock off the market and it was designed to placate Chester and Reynolds,to stop them from selling their stock so that Stein and Rubinson and Feiffer would just take it away from them at a dollar and a half a share to keep them happy.

You recall Mr. Cairnes, even though called by the defense, didn't know things about the stock transaction. All he had was a little bit of correspondence that showed that the stock was sold to Mr. Feiffer, and you recall on cross-examination Mr. Chester asked whether he,

Chester, had been involvedin that transaction, and Cairnes said, "No," not to his knowledge, but thereason it was not to his knowledge was that he didn't remember anything about the transaction.

The Government submits based on Mr. Cairnes' testimony you may well find that the person that handled that transaction was Edgar Reynolds and he is the one who knew about the transaction and that is why Mr. Cairnes didn't know anything about the transaction.

Was Chester really involved in that transaction, ladies and gentlemen?

The Government submits that there is additional evidence that would indicate he was.

You recall this document, ladies and gentlemen, Government's Exhibit 61 (indicating). You recall Weitzman testified that he found this document in his office and that Rubinson had inadvertently left it there and this was after the time that Weitzman had become suspicious and thought he was being taken advantage of by Feiffer and Rubinson and Stein.

Yourecall also, ladies and gentlemen, it was stipulated that if a handwriting expert were called to testify, he would testify that this document is in Mr. Chester's handwriting, and let's see, ladies and gentlemen, whether

it talks about a Marinus Laboratories stock transaction, whether Marinus Laboratories really is an entirely separate corporation that Chester does not have anything to do with or whether, rather, it is part of the same basic organization that is selling this Stern-Haskell stock to the public.

In Chester's handwriting there states:

"May 3, 1969.

"Marinus Laboratories, Inc.,
"Melbourne, Florida

"Gentlemen:

You have this date agreed to sell the undersigned 10,000 shares of Stern-Haskell corporate stock for $15,000."

That is exactly the deal that eventually occurred.

"A check is hereby given you for a deposit in the amount of blank dollars. The balance shall be paid in the amount of blank dollars by the Chemical Bank and New York Trust Company when the stock has been received by them with appropriate instructions."

By investment shares down at the bottom.

"Approved.

"Marinus Laboratories, Inc."

Edgar M. Reynolds just appears, ladies and gentlemen.

What happened was that the deal went on into late May; when they consummated the Marinus Laboratories transaction, they switched from using investment bank shares to Albert Feiffer, but it makes it clear that Chester and Reynolds were the ones who really knew about the Marinus

Laboratories transaction.

You may well find that it was just another of the pattern of transactions that occurred in this case which basically boils down to this:

The defendant sought to create artificial demand by paying off brokers, among them Mr. Wax, who is a defendant here on trial.

They sought to restrict the supply of the stock by stopping anyone who might want to sell lthe stock from selling it by collecting the stock in their own accounts until they had the market up to a point where it would absorb that stock.

Now you will recall in July of 1969 Weitzman is one who also wants to sell some stock, and at this point he is starting to get suspicious of Feiffer and Rubinson and Stein, sc he starts making these tape recordings.

You will recall, ladies and gentlemen, there may have been a suggestion on cross-examination that perhaps it was wrong for Mr. Weitzman to make the tape recordings, it was wrong for him not to return Mr. Rubinson's paper.

The Government is not going to get involved in that. You should keep in mind the tape recordings are there. The Government didn't make the tape recordings.

Mr. Weitzman chose to make them.

Consequently, you should take advantage of them to see what they show with what in fact occurred.

I am going to get gack to those at a later time.

In rounding out the facts of what occurred in this case, we can't forget, also, that there was a second batch of Stern-Haskell stock, and that was this batch which is larger than the one I have in my hand but it looks about the same, of 350,000 shares of Stern-Haskell stock in 1000-share certificates.

You will recall that Nordin testified that at some point he was told to print up 350,000 shares of stock certificates, and he was told,this occurred in May, and get them up to New York as soon as possible.

These were stock certificates off the books entirely as far as the Stock Transfer Agency was concerned. There was no entry made.

In addition, you will recall he said that he delivered that stock to Mr. Rubinson.

The evidence is in somewhat of a conflict here, and so I would like to explain it to you so that you have it all in mind.

The Government submits that the conflict makes not a great deal of difference because the evidence is

very clear that this stock, the big block of stock, 350,000 shares, went from Stock Transfer Agency up to Mr. Rubinson.

But I think it should be pointed out there was some conflict here.

The testimony by Mr. Nordin was that he delivered this entire 350,000-share block to Mr. Rubinson in New York, and that Rubinson ordered it by telephone from New York, and that he said in the telephone conversation that he did not want any investment legend put on the stock.

Mr. Stein's testimony was slightly different. Mr.Stein's testimony was that the time when -- it was that,first of all, Mr. Rubinson had this extra block of 350,000 shares and taht he, Stein, just saw it in New York.

Stein also recalled that when Michael Gardner wanted to get his investment stock that at that time Gardner needed the money right away and so they called down to Nordin and they asked Nordin to print up 50,000 shares, which is the amount that Michael Gardner got, and put those in the name of Michael Gardner and bring those stock certificates to New York.

Stein's understanding was that Nordin did bring the stock to New York and turned it over to Rubinson and

to Gardner.

In any event, ladies and gentlemen, whichever way it happened. you have the entire 350,000 share black in evidence, or almost all of it, and it is clearly not legended stock.

Some of those shares are endorsed, some of those are not endorsed, and I think those are the ones Mr. Andrews may have been concerned about a little while ago.

That isnot the stock that was sold out through the public market, that is overstock. You might call it green stock versus the brown stock. The brown stock was the ones that went through thepublic market and those are 100-share certificates.

The green stock is 1000-share certificates,and it was used in another manner.

In any event, ladies and gentlemen, you also have the stock certificates in Lockwood's name that were cancelled out on the records of Stock Transfer Agency and transferred into the name of Michael Gardner, and you have Michael Gardner stock certificates used by Gardner as collateral for his bank loan,and you can see that none of these stock certificates have any investment legend on them.

You may recall that there was testimony by Stein that

one of the plans that they had, while they were telling Stern and Haskell that they were really going to use this stock as investment stock, that these fellows were going to be able to make acquisitions with it, although there was no explanation whatever as to why if they are going to use it for acquisitions, it should be kept in the hands of Norman Rubinson, or it should even be put in the street name of Lockwood & Company, why they just don't keep it at Stock Transfer Agency and I don't think, when they make an acquisition -- the suggestion was you have to have it available right away.

As you will recall the acquisitions, there was long and drawn-out negotiations and there was never any suggestion that anything was about to happen with respect to those.

Stein also testified that there were negotiations with someone named Spiro in Switzerland, that they were going to possibly sell some of this stock over to Switzerland.

You will recall there were several letters introduced in evidence by the Government that Mr. Stein found, among Mr. Feiffer's belongings at the 72nd Street apartment, and those letters include the May 1st letter to Mr. Spiro, of which there is a signed original here, which is a stipulated signature of Mr. Feiffer.

In addition, a carbon copy that is unsigned, and in addition, two drafts of a letter. They are in someone else's handwriting.

You will recall the Government submits in any event we were unable to establish whose handwriting that was.

It is stipulated and agreed that it is not Mr. Feiffer's handwriting.

You were asked to compare these to see whether you thought it might be Mr. Stein's handwriting. There is some similarity, but the Government put on a handwriting expert who testified that the differences are so significant that in his opinion Mr. Stein did not write this, and the Government submits that you should accept that testimony.

The Government also submits that it really does not make a great deal of difference who wrote up the draft, because it is clear who signed the final copy and that is Albert Feiffer.

And obviously this should be taken as evidence by you that Mr. Feiffer very well knew and participated--knew of and participated in the plan to sell the 65,000 shares of Stern-Haskell stock from this 350,000 share block to somebody over in Switzerland.

There just doesn't seem to be much question about that, ladies and gentlemen, the Government would submit.

Then you will recall in July of 1969, on July 14, Mr. Gardner signs another investment letter, and that is when he gets his unlegended stock, his 50,000 shares that I just showed you a minute ago.

And at that very same time he signs another investment letter, and that investment letter says that he is not going to sell the stock, and that he is acquiring these shares for investment purposes, and that these shares may not be publicly sold, transferred or assigned unless there is a registration statement to that effect covering these shares under the Securities Act of 1933 as amended, or unless there is an exemption available from registration at the time I desire to sell my shares.

Now, ladies and gentlemen, do you recall what he does with that stock?

Two days later on July 16, 1969, he writes a letter to Mr. LaLone -- this is Gardner -- writes to LaLone telling him this is registered stock now. He doesn't tell him it is investment stock, it is registered stock, and that he wants to get a bank loan on it.

You will recall LaLone then calls up the bank in Canada and arranges the bank loan.

Gardner produces a net worth statement, and they go up to Canada, they make arrangements,and Gardner gets 50,000 on the 50,000 shars of Stern-Haskell stock.

The Government submits that it is clear that he misrepresented that stock as marketable registered stock when in fact it was lettered unregistered stock, and he didn't tell the bank about it.

Subsequently, you will recall that in November the bank has notice of the fact this stock is not any longer worth $4.50 a share as Mr. Gardner said it was at the time he received the loan, so they say: You have to put up more stock.

We get another opportunity to see how Mr. Gardner operates on this occasion. He collects some stock together, gives it to the New York correspondent of the bank, attached with a letter saying: Accepted and agreed" -- excuse me -- "Accepted in exchange" for that bank officer to sign it.

That bank officer is just a receiving agent in New York for the Montreal bank so he gets the stock and signs it. He isn't involved in the loan transaction at all.

The stock gets back up to Canada. By this time Mr. Carroll appears to be growing a little more suspicious

of Mr. Gardner, so he checks on the stock and finds out that that is not even worth-- even that stock, along with the Stern-Haskell stock, is not worth $100,000, as it is supposed to be in the loan arrangement, and so he tells Gardner that he has got to put up more collateral.

In any event, finally the loan is called due. The bank attempts to transfer the stock. The bank finds out what we knew all along, which is that that is restricted stock. They call up Mr. Gardner, and at that point he is still saying, "Oh, no, it is not restricted stock, they must have made some mistake at the transfer agent , and I'll take care of it."

And he tells the same thing both to Mr. LaLone and Mr. Carroll.

Now, ladies and gentlemen, I would like to turn to the charges in the case, and I would like to summarize for you what the Government submits is the basic evidence that establishes the guilt of each of these defendants beyond a reasonable doubt of each of the charges contained in the indictment.

The charges break down, ladies and gentlemen, into four basic categories. I think you should keep in mind that these categories are separate and independent, at least to some extent.

First of all, there is the conspiracy count, which is basically the agreement to commit other crimes, including the selling of unregistered stock, including the use of fraud in the market for the sale of that stock, the Stern-Haskell stock and, in addition, wire fraud, which is the transaction in Canada using the telephones to defraud the bank in Canada by misrepresenting the collateral.

You should recognize that particularly the unregistered stock counts and the fraud counts are quite separate. In effect, the Government is contending that it is a violation of the law to sell this unregistered stock regardless of how the market is handled afterwards, whether it is a manipulated fraudulent market or whether it is a true and fair market.

It is a violation of the law to sell the stock without registration.

In addition, ladies and gentlemen, the Government is also contending that the methods used to affect this market in this particular case were unlawful methods, regardless of whether or not the stock was registered. They could have been handling General Motors or AT&T, ladies and gentlemen, but if they are paying off brokers, and the brokers are not disclosing that to the public, and they are getting these secret payoffs, that is an

illegal and improper device that the brokers are not allowed to use.

So, consequently, these are separate types of charges.

You should recognize that in the sale of unregistered stock counts, for example, the defendants charged are Rubinson, Feiffer, Chester, and Reynolds.

In the fraud counts related to the marketing of the stock, all the defendants except Mr. Reynolds are charged.

In the wire fraud counts, there are two of them, 19 and 20 -- in count 19, there are three defendants; in count 20, there is one defendant, as I will explain to you later.

In the conspiracy all of the defendants are charged.

Now, ladies and gentlemen, in analyzing these charges there is one basic contention of the Government I would like to explain to you at the outset, and that is that these crimes required a great deal of cooperation and coordination among the various defendants.

The Government submits to you that you can now see on the basis of everything that you have heard that any securities fraud, particularly one as involved as this

one, hinges on cooperation among the number of people, on creating the appearance that a lot of people are doing a lot of different things whereas, in fact, it is all controlled by one central nucleus, and that these people who appear to be separate people are really connected and dealing together with one another.

Consequently, the Government is not contending that each defendant did each little act that may have been necessary in order to commit the crime.

Rather, the Government's positionis that there was a division of labor here, that some of the defendants had major functions and major responsibilities, whereas other of the defendants had more minor responsibilities or just different responsibilities, even though they were all very significant.

Consequently, the Government's contention is that the defendants are responsible for acts which they did themselves, they are also responsible for acts which they caused to be done, caused others to do.

A good example of that is that there are mailings in this case, and the Government frequently charges that those are essential to the guilt for these crimes.

The Government submits that if a defendant just sold or bought stock he knows that that is going to cause a confirmation to be mailed and consequently he is responsible for that mailing even thought it was probably a clerk or a secretary who actually put it in the mail box.

Also, the Government contends that the defendants are responsible for acts that they aided or abetted or induced or counselled another person or another defendant to do.

Also, if the defendants are members of the conspiracy and certain crimes are committed by other co-conspirators while that defendant is a member of the conspiracy, and it is reasonably foreseeable to that defendant that somebody else is going out to commit that crime in furtherance of the conspiracy, the defendant on trial is responsible for that crime.

I think the most obvious example of that is,

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say, if a defendant puts into the public market unregistered stock that he knows is unregistered stock, it is obvious to him, ladies and gentlemen, that other people are going to buy and sell that stock not knowing whether it is registered or not registered, not knowing what it's real value is. And he is the one responsible for that trading and he therefore is accountable for those subsequent sales which are part of his plan, which are exactly what he knew was going to happen if he put that unregistered stock into the public market.

Let's turn first of all, to the unregistered stock counts in the case. I think the two most important requirements that the Government has to -- well, first of all, let me just tell you that the Government has to establish this stock was transported in interstate commerce as to certain of the stock. We think that is clear in that it was stipulated that the stock which Mr. Myrtetus said was held in a Miami bank was brought from Miami to New York, to Brooklyn, to be sold to B'Noth Jerusalem, so it is obvious it was transported in interstate commerce.

In addition, on some of the other counts the Government has to establish that the mails were used in order to sell the stock. That is obvious as well, since there were all these confirmations, which are in evidence,

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going back and forth in connection with those sales.

The Government also has to establish that the stock was not registered, and of course, we have done that with the attestation that was put in through Mr. Pardee that there was no registration statement filed in connection Stern-Haskell.

In addition, the Government has to establish that Stern-Haskell stock was required to be registered. The Government submits that we have clearly established that. What we have established, ladies and gentlemen, is that you had here a normal, an entirely normal underwriting, with the exception of the fact that the corporation didn't get any money and that the stock that the individuals involved filed no registration statement.

Let's look at a normal underwriting, as you have heard it described. What happens? The company sells the stock either to the public or to an underwriter. If they sell it to an underwriter then the underwriter just goes out and sells it to members of the public.

The company puts out a registration statement. The SEC comments on it, and deals back and forth with the people involved, reviews the registration statement. Sometimes they change the registration statement. Then it is distributed to members of the public, and finally, the

offering becomes effective, and any investor can get information about the stock.

What happened in the Stern-Haskell situation? The Government submits that it was basically in reality the same pattern as a normal underwriting. Stern-Haskell was the issuer, or the company that was involved. The Government submits that National Ventures, Defendant Bill Chester, Edgar Reynolds, Sidney Stein, Norman Rubinson, and Albert Feiffer, were co-underwriters, or persons who directly or indirectly participated in the underwriting.

Why were they underwriters? Because they obviously took the stock with a view toward distributing that stock to the public.

Indeed, if you will look at the contract you will find, ladies and gentlemen, it says right in it that they are going to declar this stock dividend. The Government would submit you can find they not only agreed to declare the stock dividend but they agreed at the Blank Furniture meeting in Miami, Florida, that after the nominees got the stock that it was going to be sold in a public market, and consequently they were taking the stock with a view toward distribution.

In this regard, ladies and gentlemen, it doesn't make any difference whether they called themselves under-

writers or toy companies or real estate companies or anything else. What you have to do is look to see what they really were, and the Government submits that when you do that you find that they really in fact were underwriters.

The Government submits it's also been established here that this was a transaction which was not exempt from the registration requirements of the Securities Act. The defendants appear to have claimed an exemption under this no-sale theory, but the Government submits that you should find that that theory was not applicable, that exemption was not applicable to them, if you find that this scheme is really an underwriting which they just called a spin off to avoid the registration requirements of the securities laws.

The Government submits to you that it's entirely clear here that that is exactly what was going on. It is clear that National Ventures had no product to sell other than Chester's and Rubinson's and the others' willingness to avoid the law. That avoiding registration was the only object of taking this stock down from the Bronx to Florida, and then bringing it back up again.

Let's face it, ladies and gentlemen, this company up in the Bronx, was a subway ride away from the financial center of the Western World. Don't you think that

they knew that there were plenty of companies right down about ten blocks down from where we are right now, that know very well how to carry on a proper and lawful public offering.

Of course they knew that, ladies and gentlemen, and the Government submits that you can well find that the only reason that they went down to Florida and back up again is because they wanted to avoid the registration requirements of the law.

There is no purpose whatsoever to this spin off other than avoiding disclosure to the investing public, and don't ever be fooled into thinking there was any other purpose to it, ladies and gentlemen.

Ladies and gentlemen, if you have any doubt about it look again at the transactions of Diston Industries and Mobile Home Ventures. They showed that National Ventures was doing the same thing over and over again. It's a spin off mill down there, that's all it is, and the Government submits you can use that evidence also to find that this was not some kind of a special transaction, but a transaction whose only purpose was to go public without going through the registration requirements.

The Government submits that you can also find that National Ventures itself was substantially a fraudulent

shell, that all it was was a piece of paper that was owned primarily by the defendants, and that it had no assets whatever other than what it claimed was this land that it really didn't own.

In addition, ladies and gentlemen, the Government submits that there is a second theory that you could also look at, if you wished to, and that is that the sales here were by control persons. Judge Motley will describe to you later, exactly how the law works on that subject. A sale by a control person can be a violation of the registration requirements regardless of whether the person is an underwriter.

The Government submits you can well find in this situation the defendants I described to you, were control persons.

What's the control person? It's someone who has the amount of power in the company to require them to file a registration statement. Here, ladies and gentlemen, Chester, Stein, Rubinson, Feiffer, and the others, had total control because it was obvious that no offering could occur of this stock without a registration statement unless they agreed to it, ladies and gentlemen.

Finally, the Government has to establish, ladies and gentlemen, in order for you to find any of the defend-

ants guilty of unlawfully selling unregistered stock, that the defendants knew that this stock was not exempt from the registration statement requirements.

I want to make it perfectly clear, ladies and gentlemen, that the law does not entitle you, and the Government does not ask you, to convict anyone of any of these offenses based on some kind of technicality or confused rule that they didn't know anything about. The Government is not asking you to do that for one moment. The Government, however, submits, ladies and gentlemen, that based on the evidence here you must find that the defendants charged in these unregistered stock counts have one of two guilty states of mind, and that's either that they knew very well that what they were doing was a violation of the law, or they knew it was very likely a violation of the law and they just wanted to recklessly go ahead without even finding out whether it was a violation of the law.

So this doesn't mean, ladies and gentlemen, that somebody can't be found guilty of unlawfully selling unregistered stock unless he has received some kind of engraved invitation from the SEC saying "Dear Sir, we would like to point out to you that what you are doing is a violation of the law."

That is not required. All that is required is

that he know that it's not exempt from registration or that he know it is very likely not exempt from registration, and he doesn't take the trouble to find out.

In order to evaluate this, ladies and gentlemen, the state of mind of these defendants, the Government submits, that you are going to have to just use your common sense, and your knowledge of human nature. We didn't bring on any witnesses, it is true, who could tell you that Bill Chester told me that he was going around selling stock in violation of the law.

Your common sense will tell you that if that's what they were doing they are not very likely to announce that to the general public.

Also, ladies and gentlemen, your common sense will tell you that the way you evaluate this is by looking at the defendant's activities in light of the circumstances and in light of what they knew at the time. In that regard, ladies and gentlemen, consider first of all that every one of the defendants charged in these counts -- and these are Rubinson, Feiffer, Chester and Reynolds -- knew very well that there was a legal problem here. We are not talking about anybody who was unaware of the registration requirements; who could be selling stock and say "Gee, I didn't know you had to have a registration requirement."

They all knew that. They are all professionals in the securities area, ladies and gentlemen. Chester is an attorney who is down there running this spin off mill.

Rubinson is the head of another corporation who had had substantial experience in the securities area.

Feiffer is someone who opened accounts at various New York Stock Exchange brokerage firms and told them that he made his money by investments, and he is going in every day, coming up to New York and working with Sidney Stein, and that's all he is doing is working in the investment area, the financial area. And that's the evidence you have about those defendants.

In addition, the Marinus Laboratories prospectus told you about Mr. Reynolds, that he was a financial consultant. A former Board Member of some bank. So he knows about registration requirements, ladies and gentlemen.

So you start from that proposition.

All these defendants also know that normally registration is required and that they are not doing it, they are not making any disclosure to the public.

In addition, you will recall Mr. Hochen testified that Chester expected to do several spin offs and that possibly he would get queries from the SEC on whether it was a violation.

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The Government submits, moreover, in addition you go from the proposition that they knew there was a legal problem when you examine the evidence, you will also find that these defendants knew that they were violating the law.

The question here is whether they had that knowledge of whether they made good faith efforts to find out what the law really was, as accurately and as truthfully as they possibly could, and to abide by the law.

The Government submits that the evidence is clear that the defendants here knew that what they were doing was illegal, and the best evidence is, first of all, that they obtained legal opinions which the Government submits gave them clear warning that this was illegal, and, secondly, that even on those opinions, even in order to receive those opinions, they did not give full disclosure to the attorneys who were rendering those opinions.

Now, let's start out with the first legal advice that you were told about, ladies and gentlemen, and that was that Nordin testified that Chester told -- that he suggested that Chester consult with this Professor Sowards down at this University of Miami in Florida and that Chester told Nordin that he had consulted with him and that this Professor told Chester that all of the stock coming out of

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one of these spin offs would have to be legended stock, that it wouldn't be free trading stock.

Let's look also at another letter that Mr. Chester received, ladies and gentlemen. This is a letter with reference to the Mobil Home Ventures matter dated May 16, 1969.

Even though this letter occurs after the spin off itself, ladies and gentlemen, which had occurred in April, keep in mind that this letter occurs and is in Chester's hands before he comes up to New York and sells the stock to B'Noth Jerusalem, before some of the transactions through the Roberts account that are sold through Miami and up into the public market, before the stock sale by National Ventures, which also occurs in July, and you can find that on your charts as well.

He has got this letter in his hands, ladies and gentlemen, and I would like to read it to you entirely, because the Government submits to you that this letter establishes beyond a reasonable doubt any question whatever that Chester is on notice that what he wants to do is violating the law.

It is dated May 16, 1969, and it says as follows:

"Dear Mr. Chester:

"You have asked our opinion concerning a liqui-

dating dividend in Mobil Home Ventures Inc. to be distributed by your company, National Ventures, Inc. You have supplied us under cover of a letter dated May 12, 1969, with various documents describing that letter. We have reviewed these and this opinion is based upon the facts contained in those documents.

"In November of 1968 you obtained control of National Ventures as a result of the sale to that company of certain land in Peru. Subsequently you made certain private sales to individuals in February 1969. Ventures purchased 200,000 shares of Stern-Haskell Inc. stock which stock was distributed as a liquidating dividend to Ventures' shareholders.

"In the opinion of your counsel, such liquidating dividends were exempt from the registration requirements of the Securities Act of 1933, and the recipients of the liquidating dividends accepting a control position, received freely tradeable shares."

I am going to talk about that opinion in just a moment, ladies and gentlemen.

"Your company now proposes to purchase stock from Homes and liquidate it to your own shareholders. You have asked for our opinion whether this violates the Securities and Exchange Commission Rules, and whether per-

sons who hold restricted stock in Ventures would receive freely tradeable stock in Homes.

"As I told you orally, the law on this subject at the moment is uncertain and is in a state of flux. Consequently, it is impossible to render a flat opinion on what's permissible and what is not."

Let's get it straight right there. This man is not telling Chester that spin offs are legal. He is saying this law is in a state of flux, and you have to watch out what you are doing.

The next paragraph, "The law has generally been that such a transaction is permissible and the recipients of a liquidating dividend would have free trading stock, provided they are not officers, directors, 10 percent shareholders or in control position with the company."

And listen to this sentence, "But even today this would only be true if the overall plan behind the transaction was not developed to avoid registration with the Commission and was not a device to put large blocks of unregistered stock in the hands of the public who have inadequate information about the company."

Incidentally, the Government submits that is an accurate, totally accurate description of what happened in this case, and he is saying that is not exempt.

"Thus," the letter continues, "if it could be established at a later date that the transaction as described above were purposely devised to create a liquidating dividend without disclosure to the public, the Commission might attack all of the corporate transactions on the basis of fraud."

The man is a prophet. That is exactly what happened in this case.

He goes on further, ladies and gentlemen, he tells them that the Commission is not giving any "no action" letters about this anymore and that they are not saying this is legal.

"As you know, I inquired from the Commission staff as to their present views in this general area of the securities law and they stated that the subject is under review and they would not be able to issue a 'no-action' letter based on our opinion or any other counsel's opinion on this subject."

He goes on, "The Commission has recently released a report by a Commissioner and small group of the Commission staff known as Wheat Report, and entitled, 'Disclosure to Investors, A Reappraisal of Federal Administrative Policies Under the 1933 and 1934 Acts.' It seems clear to me from reading this report that if its recommendations are adopted by the Commission, no liquidating dividends or spin offs would be permissible without registration or compliance with the disclosure policies of the securities acts."

In there he is saying no spin offs would be permissible without registration compliance with the disclosure policies of the Securities Acts."

In there he is saying no spin off of any kind, even the more conventional types of spin offs. He then says,

"With this in mind, I believe you should consider carefully whether your contract with Homes has any other corporate purpose than to make a distribution of stock in order to put it in the hands of your shareholders where a market might be created. In this connection, I note that the contract between your company and Homes is contingent upon your company liquidating the stock through your shareholders. I cannot caution you too much that the Commission is investigating this area of corporate activity and could well select certain companies' transactions to establish either a fraud or manipulation case rather than wait to promulage new rules per the recommendations of the Wheat Report."

How could he make it more obvious, ladies and gentlemen, that if it is a scheme to avoid registration, you just can't do it.

"With these caveats, and assuming you could establish your transaction with Homes had some other purpose besides distributing tradeable stock and assuming further that your company is not engaged in a pattern of liquidating dividends and spinoffs, the answer to the two questions posed in your letter is, one, the agreement in and of itself doesn't violate the SEC Rules and, two, the persons receiving stock would obtain freely tradeable

stock unless the recipients were officers, directors, ten percent holders or in a control position."

The Government submits that that letter makes it very clear that what Mr. Chester wanted to do as of May 16, 1969, was unlawful, and it tells him that.

In addition, ladies and gentlemen, you may recall that it was even after, after he receives this letter -- this doesn't stop Bill Chester, but he goes forward again with another spin off, with Diston Industries, ladies and gentlemen, even after, May 28, after he receives this letter, he does another spin off and he is still selling Stern-Haskell stock as fast as he can go.

Let's look at the Germaise letter now.

That is the letter issued by Irwin Germaise back in February of 1969 and, ladies and gentlemen, the Government's position with respect to that letter, ladies and gentlemen, is that it provides a clear warning to Chester and to anyone else who is at all sophisticated in securities matters of exactly the same thing that Mr. White said in his letter.

It starts out similar to the White letter, saying there is a certain amount of confusion in the law, and the Government would agree that this letter tends to be a somewhat confusing and convoluted letter.

On the other hand, however, you recall that the letter does state, on page 8, that the transaction of the type that Mr. Chester seeks to engage in would be lawful insofar as the same is accomplished in the absence of mala fides, in other words, bad faith. He goes on a little further and describes a couple of cases, a Micro-Moisture case and a case with Canadian Oil stocks where the SEC has attacked those transactions as schemes to avoid the registration requirements.

Then, as we get toward the end of the letter, Germaise says as follows:

"One might cite a relevant portion of the Sweet Grass Rule" referring to another case, "as it may apply to this discussion as follows:

'If the issuer' referring to Stern-Haskell, 'or persons acting on its behalf'referring to National Ventures 'participate in arrangements for a distribution to the public of any of the stock issued to stockholders or have knowledge of a plan of distribution by or concerted action on the part of such stockholders to effect the public distribution in connection with the transaction, a section 4(1) exemption would not be available since an underwriting within the meaning of the statute would be involved.'

"In view of the foregoing and of the expressed

opinion of the Commission, the entire transaction," referring to the Stern-Haskell transaction, "including all of the intermediate steps may not be a pre-existing plan or device to avoid registration and to, absent such protective device, distribute large blocks of stock to the general public."

Again, the conclusion is worded very simply to the conclusion of March White. What he is saying is, "Assuming you can show it is not a scheme to avoid registration" which is what they can't show in this case, "then it is legal."

That doesn't mean this transaction is legal.

In the conclusion, what does he say? Germaise tells Chester "The Stern shares in the hands of non-control national shareholders are free trading. In the absence of a plan or scheme to utilize such shareholders as a conduit for distribution in evasion of the registration requirements of the Act."

He makes it obvious again to Chester that that is what the law is and he can't do what he wants to do.

Ladies and gentlemen, there was a certain amount of testimony from Mr. Stern that at the time they went to the meeting with Mr. Germaise, Mr. Rubinson was present, Mr. Haskell was present, and that Mr. Germaise orally was

more enthusiastic about the transaction than he was in writing.

Well, of course that doesn't affect Mr. Chester because all we have is Mr. Chester getting the letter, but in addition, ladies and gentlemen, the Government would submit to you and to your judgment that in a matter such as this that any ordinary human being would be put on notice by either the language I read to you from that letter or B, the fact that the guy says one thing in writing and switches around and tells you something else in person.

Wouldn't that put you on notice? Wouldn't that make you wonder about it? In addition, keep in mind that the defendants here are professionals in this area. The Government did not charge Mr. Haskell with the substantive registration violations, although he is charged in the conspiracy and, consequently, ladies and gentlemen, the only persons you have to evaluate those substantive counts in connection with are the people I mentioned who are not newcomers to the registration rules.

Let's look at another thing, ladies and gentlement. The Government submits to you that even these letters, as guarded, as clear and obvious as they make it that this is a violation of the registration requirements -- even those letters, ladies and gentlemen, were procured on the

basis of fraud.

Suppose you wanted some advice from some professional person, maybe a lawyer or a doctor or an engineer, or something like that, you wanted his opinion, what do you have to do?

You have to lay all your cards on the table, tell him all the facts. You cannot go to the doctor and ask what is wrong with your leg if you don't tell him that, you know -- if you write to him and don't even let him look at your leg or if you can't get an insurance policy it will be very good if you don't tell the doctor two weeks ago you had a heart attack, and that is what the defendants were trying to do here, trying to get some insurance, only they didn't tell the doctor that they just had heart attacks and they didn't tell the engineering that there was something wrong with the buttresses under the bridge.

They gave a whitewash version of the facts and if you look at the attachments to Mr. Germaise's letter you find a letter from Mr. Chester which states that National Ventures owns this land in Peru. It doesn't say it has an interest in it, it says it owns it, which you know is not true, they don't own any land at all.

In addition, you look at the first attachment to the Germaise letter and that is a letter purportedly

signed by Sten Nordin, really signed by Bill Chester, and that is stipulated, giving the impression that National Ventures has about 800 stockholders. You know a lot of those stockholders were created by giving away stock.

In addition, ladies and gentlemen, you heard Mr. White testify that he was not told any of these fraudulent things that were going on, he was not told a lot of National Venture stockholders were really nominees for the people who would control the public market, wasn't told stockholders had been created by giving away stock, he was not told the company in Florida didn't own any land. Why wasn't he told that? Because they knew that if he knew that, he wouldn't even have to say if this is a scheme to avoid the law, it can't be done, he would just write a letter back and say "Obviously it is a scheme to avoid the law and you certainly can't do it."

Why didn't they tell him that? For the same reason that people seek advice and hold back information, because they knew, although they had never told it to anyone, although we have no statement, the reason they held back was because they knew in here (indicating) that if they told him all the true facts that it was obviously an illegal scheme.

Well, Mr. Chester, ladies and gentlemen, as I

recall, also talks -- excuse me, the Government anticipates that he may rely or seek to rely on some magazine article, and the Government would submit that you really shouldn't pay too much attention to that because you are probably aware of the fact that because activities are written about in newspapers and magazines doesn't mean that they are legal.

In fact, you may have noticed from your experience that many of the things that are written about in newspapers are criminal. In fact, that is one of the things that newspapers like to report, isn't it, when criminal activity is going on?

Let's look at the Business Week article. Does it say this activity is legal? In two places it quotes from the SEC, and what does it say? "Stanley Sporkin, Associate Director of SEC's Division of Trading and Markets says: 'We are not taking the position that these companies are exempt from registration. We are looking at the approaches very closely.'"

Later on, "The SEC's Sporkin believes that some companies can be brought under regulation through anti-fraud laws. And he isn't willing to concede that dividend distributions of a subsidiary's stock don't constitute a securities sale. Sporkin's major point about disclosure is

that the shareholder who receives the stock dividend doesn't have enough information to decide whether to sell or hold on to it."

That is what Mr. Chester read in the magazine and it is just a reiteration of the same thing we have been telling you all along, that he as an attorney knew very well this was illegal and every person he told it was legal he was misleading.

Whether you look at it after he read the Business Week article or after he received Germaise's opinion or if you look at it after he received the opinion of Mark White and May 16, 1969, and still went ahead and told Disner "This is okay, we can go through with this transaction." That is fraud, ladies and gentlemen, and it is fraud by a lawyer and that is why Mr. Chester is here in Court today.

What about Mr. Rubinson, ladies and gentlemen? The Government submits that the same knowledge is largely applicable to him. He saw the Germaise letter. He knew very well full disclosure was not being made to Mr. Germaise. He thought Germaise was a good lawyer because Germaise would go out on a limb and also he knew that nominees were all over the deal. He was all over this transaction himself, Rubinson was, and what do you find, you find that his name

isn't on a single piece of paper, don't you? Rubinson is all over it. He is talking to Weitzman about it, talking to Nordin about it, paying his accountant with Stern-Haskell stock, talking to Hochen about it and telling him, "We need this stock in New York, you can't have your stock, we have to pay it to brokers."

He is paying money to Phil Kaye to sell the Stern-Haskell stock but his name is not on a single piece of paper.

Why do you suppose that is? It is for the same reason that Sidney Stein's name is not on a single piece of paper? Is it because he knows this is an illegal transaction, from start to finish, and doesn't want his name on any piece of paper connected with Stern-Haskell stock? You better believe that's the reason.

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That is why Mr. Rubinson is here. You had a great opportunity to hear Mr. Rubinson during the trial. He certainly demonstrated to you he was an intelligent and articulate person through his cross-examination of various witnesses.

What about when you had an opportunity to hear him during the course of the Stern-Haskell transaction?

The Government would submit to you that what you heard was on that tape recording by Mr. Weitzman and it was a very guarded man who didn't even want to be taped on a telephone conversation because he was afraid of what he was saying and he didn't want what he was saying to be known by anyone else.

You recall Weitzman testified he wanted to sell stock and Rubinson doesn't want him to sell stock because they were buying the stock and that would foul up the market and they made an arrangement whereby Rubinson would bring down stock certificates for him to sign.

Rubinson is perfectly capable of picking up the telephone and saying: Mr. Weitzman, I have your stock certificates and you can sign them.

What did you hear on the phone conversation? "The pieces of paper, you got the thing we were talking about."

Let's listen to it again, ladies and gentlemen.

(Tape played)

Why can't Mr. Rubinson-- he says, "I want to tell you what you have to do."

He is perfectly capable of telling him over the phone, but he doesn't want to do that. He doesn't want to talk over the telephone.

What about Mr. Feiffer?

The Government would submit-- you recall there was another opinion letter in the case and that was an opinion letter that Sidney Stein also found in his belongings, Feiffer's belongings, in the New York apartment and that was from Frank Freeman, and the Government would submit that evidence establishes that Feiffer also appears to have seen the Germaise letter and therefore because the Freeman letter, if you read it -- I don't have time to do it right now -- if you read it, refers to the Germaise letter and goes off onto a number of different issues relating to intrastate transactions and one thing and another and that Freeman letter says that the transaction letter is legal, but it agrees with the conclusions of Germaise and the Government submits those conclusions are a clear warning to these defendants.

Also there is the fact that Feiffer knows that he

is a nominee for Rubinson and Stein. How long do you think he had to be acting in this nominee capacity, ladies and gentlemen, before he figured out maybe there is a reason why he is acting as a nominee, maybe there is a reason why Norman Rubinson and Sidney Stein don't want their names to be connected with this transaction.

The Government would submit, ladies and gentlemen, that any person of even subaverage intelligence would figure out very rapidly when he is running around being a nominee and picking up hundreds of thousands of dollars all the time for these individuals -- you remember he did things in the Blank transaction-- that he can figure out that the reason they don't want their names used is a fraudulent reason, and is a reason that involves a violation of the law, which is exactly what the evidence shows in this case.

Also you recall the testimony was Feiffer was very closely associated with Stein and Rubinson and his function was as a nominee to disguise the transaction.

Also, ladies and gentlemen, I would like you to think about some of the tape recordings of Mr. Feiffer during the transaction.

If you want to look at those transcripts you will see that Mr. Feiffer is not saying,"Gee, I don't understand

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what is going on. Gee, I have to talk to Sidney. I don't understand anything about it."

But Weitzman is saying, "I would like to sell some stock," and Feiffer is saying, "Oh, I can do it for you."

Weitzman calls back and says, "I can't sell my stock because because I don't have proof of ownership," and Feiffer says, "I told you that,you listen to me, Weitzman," and if you have any doubt about it, you should listen to them again or look at the transcripts again and you will find there is no indication on these tapes that Mr. Feiffer does not know what is going on. He knows very well what is going on.

It is an interesting debate to see whether Stein was more important than Feiffer and what the pecking order was, but that is irrelevant from your point of view.

The question as far as you have to decide is whether he was a knowing participant in the transaction, and the Government submits that the answer is fairly obvious. That he was.

Let's look also briefly at the control person analysis I suggested to you before. The evidence is very clear that Chester knew he couldn't sell stock and the Government would submit that the evidence is also very clear that Chester did in fact sell stock and that he sold

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it through nominees.

The reason he did that was because he didn't want to get caught selling stock when he wasn't supposed to.

His nominees, Roberts, National Ventures, which was clearly established to be nothing other than Bill Chester by the bank officer who testified and also you recall Nordin testified he delivered cash back and forth and even had one check that Frances Roberts received for Stern-Haskell sales that she delivered right over to Chester.

What about Reynolds? The Government submits it is clear he acted also as a nominee for Chester.

Where is the proof of that? Nordin testified they set up National Ventures together. There are documents in evidence which show that Edgar Reynolds was a vice president of National Ventures, along with Sten Nordin, who was the secretary.

Also you recall that as soon as Chester makes the deal to sell the Stern-Haskell stock, who comes with him? Ed Reynolds. Who gets the money? Bill Chester.

Also, ladies and gentlemen, you recall when Hochen has his Mobile Home Ventures stock and Hochen wants to get that stock and Chester call s him up and says, "Well, you are not going to get that stock, we are going to take

it back from you," and Hochen agrees to that. Who does the check come from paying him for his Mible Home Ventures stock?

Ed Reynolds, the guy he never talked to.

There is a letter there,too, going either to or from Reynolds indicating that again Reynolds is basically a nominee of Chester.

How about the Marinus transaction? Is that a transaction that was really controlled by the witness Charles Cairnes, the president of Marinus Laboratories?

Absolutely not. He didn't know anything about it and the reason he didn't was because itwas controlled by Ed Reynolds and you have the handwritten document in evidence which shows you again that Reynolds had a nominee relationship with Chester because it was Chester who actually set up that sale or who actually drafted out the terms.

Now I would like to turn, ladies and gentlemen, to the counts relating to the fraudulent distribution and sale of stock in the public market, that is, creating the price, and here the defendants are Rubinson, Feiffer, Chester, Haskell, Levine, Wax and Gardner. In other words, everybody except Mr. Reynolds. These are separate from the unregistered stock counts.

It wouldn't make any difference if the stock was registered or not if the defendants used fraudulent devices in order to affect the price of that stock and then it is improper and unlawful as a device, scheme or artifice to defraud or, in their omissions to state material facts necessary to make the statements they do make not misleading, or in terms of engaging in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of Stern-Haskell stock, and the Government submits indeed there were frauds and deceits as to those purchasers in this case.

The basic scheme here, ladies and gentlemen, was, first of all, the use of false quotations by Michael Gardner, and I referred earlier to the fact that Gardner puts in these quotations only when he is either agreeing to get cheap Stern-Haskell stock or later on when he actually gets that stock.

Why is Gardner doing this? Because he thinks Stern-Haskell is the greatest company there ever was or is he doing it so that his stock that he gets at ten cents a share will be worth a lot more than that.

Also, you may look at the fact that Gardner does not in fact trade the stock.

Is hein there as an ordinarybroker who is quoting

the stock because he really wants to tarde it or is he in there just as a sham because he doesn't want to trade it but move the price up?

On cross-examination, Mr. Higgins went after Ms. Nelson, saying Ms. Nelson was only guessing that Gardner didn't want to trade the stock.

She was not guessing on the best evidence of all, the man's intent. He doesn't trade the stock. He could if he wanted to, and she is inferring from the fact he does not trade the stock that he didn't want to trade the stock and the Government submits that is the most reasonable inference to draw in this case.

Let's look at the other fraudulent device used in the market, and those are the secret cash payoffs used to market the stock.

The Government submits that once you recognize that Levine is getting the secret cash payoffs to market the stock of Stern-Haskell, then you look back at your charts and you come to the conclusion very rapidly that every time Levine puts in a quotation saying that he is willing to pay a certain amount to buy Stern-Haskell stock, that that is a fraudulent quotation, because he is really not paying that much.

Whenever he sends a confirmation over to these

New York Stock Exchange firms saying, "I bought from you for $4 a share for the account of Albert Feiffer," that is false, because he is not buying it for $4 a share, he is getting a $1 kickback and only paying $3 for that stock, and every time he engages in one of those transactions, that is a fraudulent device, and in addition, he is not disclosing to the general public that this stock is a stock that is such a great stock that you have to pay somebody to take it off your hands.

That is what a great stock it is and that is what Stein, Feiffer and Rubinson are doing and the guys they are paying are Wax and Levine and Kaye.

In addition, ladies and gentlemen, you recall the testimony also was that Levine had arranged for other people to go into the sheets on his behalf, including Barroff, so that where there was the appearance, again as I explained to you earlier of independent marketmakers in the sheets, they were not really independent marketmakers; rather, they were not independent marketmakers, but were allied with Levine, at least many of them were, and one of them is Barroff, the evidence in the case would tend to indicate.

Also, ladies and gentlemen, you will recall the testimony was that Mr. Levine engaged in another course of business, and that was he guaranteed Mr. Sklar against any loss for selling the Stern-Haskell stock, and guaranteed that he would take it back from him.

That was another interesting device Levine was using just to push the stock out.

What about Walter Wax, ladies and gentlemen?

You will recall Mr. Kaye testified that Walter Wax also participated in this arrangement, was the one who recruited Kaye, and that when Kaye delivered the money down from Stein's apartment that he received from Stein and Rubinson, then the money was given to Levine and Levine took some of it out and gave it to Wax.

Wax' customers, ladies and gentlemen, were entitled to know that, and they didn't know it.

Wax' customers also, ladies and gentlemen, were entitled to know that Wax knew that the marketmaker, the primary marketmaker in the stock,was running a fraudulent market in addition, and they didn't know lthat.

Teh reason they didn't know that was because Walter Wax didn't tell them that, ladies and gentlemen.

So what did Walter Wax do? He sold Stern-Haskell stock to more-- he sold more Stern-Haskell stock than

any other retail broker.

We didn't bring all the witnesses in, ladies and gentlemen. The records show he sold it to between 30 and 40 different customers, and those records are in evidence.

We could have brought every one of them in to see what their testimony was. We brought in Ms. Dundish, Rabbi Schuchalter and Mr. Altschuler, who all testified Walter Wax told them it was a good stock and they should buy it.

What's so great about it? Where is the evidence of what was so great about Stern-Haskell stock?

There isn't any evidence of anything being great about Stern-Haskell stock as far as Walter Wax was concerned except the fact that he was getting a payoff.

THE COURT: Mr. Wohl, excuse me. It is 12:45. We are going to recess now until two o'clock for lunch.

The jury is excused.

(The jury left the courtroom)

THE COURT: Under our time schedule, you have 45 minutes left, Mr. Wohl.

MR. WOHL: Thank you, your Honor.

THE COURT: Do you think you will be using that much time?

MR.WOHL: Yes, I do, your Honor.

(Luncheon adjournment)

MD

AFTERNOON SESSION

2:10 p.m.

(In open court. Jury present.)

THE COURT: You may proceed, Mr. Wohl.

MR. WOHL: When we broke for lunch, ladies and gentlemen, I was talking to you about the fraud and manipulation counts.

There were two areas, however, that I wanted to go back to on the unregistered stock count for just a moment. The first of them is that you recall the testimony was somewhat conflicting concerning this Bnoth Jerusalem organization. Several witnesses testified that it was an organization that was closely allied to Mr. Stein, and that Stein testified that it acted as a nominee.

Then the Rabbi testified, and he didn't seem to be able to remember a great deal about these stock transactions.

The government submits that when you look at the records which are in evidence you will find that the- stock transactions of Bnoth Jerusalem tended to be very much centered around the activities of Mr. Stein, with First Investment Financial Corporation, with Mr. Reynolds, the $28,000 check, the Stern Haskell stock, and also a stock called Fallon Smith, which you heard about on cross examination

of Mr. Stein. And, in addition, you will notice a certain amount of coordinated activity of Bnoth Jerusalem.

You recall two witnesses, Weitzman and Hochen, testified that they received a thousand dollars for 16,000 shares of their Diston stock, and Hochen testified he got this from Rubinson, and he had a conversation with Rubinson saying, "Why don't you donate all your stock to the charity?" And Mr. Hochen said he didn't particularly want to do that, and ultimately they got these thousand dollar checks.

They are all in evidence, and they are exactly the same type ofcheck, each dated July 9, 1969, to Hochen, to Weitzman, to Silber.

And then, in addition, there is a check to Feiffer which is torn of the same date, but there is another check in evidence which shows that this torn check was made up for.

The government submits the evidence pretty clearly establishes that Mr. Stein's testimony was quite accurate when he testified that this Bnoth Jerusalem was his nominee organization. He certainly had no reason to make that up.

The Rabbi's testimony just indicates he apparently has forgotten about that, or that when he was

delivering this cash -- you will recall there was a lot of cash going out of that organization -- when he was delivering the cash out some of the cash was diverted back to Mr. Stein, Mr. Rubinson, and Mr. Feiffer.

In addition, ladies and gentlemen, I also want to mention this 1969 press release of the SEC that came into evidence by the defense. I think you should bear that in mind. Bear in mind a couple of things. First of all, the press release is not new law, and if you read that release you will see very clearly that the SEC is not purporting to write a new law, and it is not a newlaw. That is just a press release relating to what the law has always been.

In addition, if you recall the letters that I read to you earlier today certainly there was nothing new to Mr. Chester, or any of the defendants who saw the Germaise letter, in the 1969 press release of the SEC in July, because in effect they say the same thing in that release: that it is illegal to have a scheme or device to sell unregistered stock to the public, even if you call it a spinoff.

They are saying exactly the same thing, so it is not new information to these defendants.

Finally, the government would submit that you should keep in mind when you evaluate all of this evidence that Mr. Chester and the other defendants didn't stop,

particularly Mr. Chester, did not stop selling Stern Haskell stock when this release came out. They just continued selling Stern Haskell stock. So the government would submit that that release is largely irrelevant, and is not any indication whatever that these defendants didn't know that what they were selling was unregistered stock, that it was required to be registered.

Let's go back to the market manipulation counts, or the fraud in the market counts, relating to the price of the stock. I was about to explain to you what the government submits the proof is as to these manipulative, artificial arrangements in the market of the stock.

First of all, with respect to the activity of Michael Gardner in going into the pink sheets and raising the price, that is largely circumstantial evidence. You have to infer that from Mr. Gardner's actual activity of when he goes into the pink sheets in relation to when he gets this cheap stock.

The government submits when you put that together you can see clearly that Mr. Gardner's objective is to raise the price of the stock, because that is exactly what he does. His objective is also to participate in the pink sheets in response to getting that free stock.

The way you infer that is because of the time

he goes into the pink sheets: first of all, in April, when the agreement is made he is going to get the stock; and secondly in July, when after a hiatus of some period the stock is finally delivered to him. What happens at the same time? He goes right back into those pink sheets, and helps out in making a market.

There is one thing I mentioned earlier, and that is he goes in offering to sell the stock at one dollar originally. Actually, in his original quotations he is offering to buy the stock at one dollar, as the evidence shows. He doesn't offer to sell it except at five dollars and four dollars. That is what he is offering to sell it at, ladies and gentlemen, and you should keep that in mind, in comparison to what he pays for that stock.

Now let's look at the cash payments, ladies and gentlemen. Obviously, we were not able to introduce for you any photographs of any cash changing hands. We weren't able to introduce tape recordings of what was said at the time. We weren't able to introduce signed receipts saying "So and So got a particular amount of cash payments."

The whole series of transactions was designed for secrecy, ladies and gentlemen. That is why cash was used, and that is why the payoffs weren't made by check.

It was all designed for secrecy.

So you have to look to the evidence you would normally expect to find of a cash payoff. What is that evidence, ladies and gentlemen? It is that person who either paid the cash or the person who received the cash, because in normal course those are the only people who are going to be there, and that's the evidence you heard in this case. You heard the testimony of Mr. Stein that he made this arrangement with Levine and Wax, and that is why they were going to take the stock into Locwood and sell it through Brod and other companies, if they could make the arrangements.

Stein testified he paid Kaye, and it was his understanding through a telephone call with Levine Kay was actually going to take the money down and give it to Levine and Wax.

He testified that later on he talked to Levine and Wax, and that they got their money. He never testified that he actually made a hand to hand delivery to either Levine or Wax. He said he really couldn't recall whether he had actually delivered any money personally to them or seen them get the money, but it was his understanding just from what he had been told that Kaye had given them the money and that Feiffer and Rubinson had made other deliveries of

money to Levine and Wax.

Kay corroborated that testimony. He testified that he had been recruited by Levine and Wax to tout the stock, and that he had been told that he would get a certain number of cents per share for whatever sales of Stern Haskell stock he was responsible for.

He also testified that he delivered money from Stein, and he said that when he picked it up from Stein that Rubinson also counted out the money as well, and delivered it from Stein and Rubinson down to Levine and Wax. He gave it to Levine, he saw Levine take some of the money and give it over to Wax.

The government submits that what you have here is basically testimony from two independent witnesses who corroborated one another, and there was a massive attack on these people, ladies and gentlemen, as to what kinds of people they were. The government submits that their statements concerning these cash payoffs really remained essentially unshaken on cross examination.

Let's look at it, ladies and gentlemen. What kinds of people would you expect are going to be making these cash payoffs and delivering the cash payoffs and touting the stock for cash payoffs? They are not nice people, ladies and gentlemen; they are criminals, both of

them. There is no question about it. And that's why they were indicted in this case. That is why they pled guilty in this case, ladies and gentlemen. The government has never attempted to suggest to you that either one of those people is any different from exactly that. We have never suggested otherwise.

But, ladies and gentlemen, do you expect that you are going to get someone of an unblemished reputation who has never participated in any illegal transaction to come in and tell you they saw these cash payoffs? Absolutely not, because the cash payoffs are organized in such a way that the only people who are going to be able to see them are people that these defendants Levine and Wax trust, and the reason that they trusted Sidney Stein and Phil Kaye is because they were on the inside, they were in on the deal with them.

Ladies and gentlemen, also you have got to recognize, and the Government has never suggested otherwise, that these two men have certainly pleaded guilty and they have testified obviously in order to help themselves, in order to convince the Court and the Judicial System that they have some contrition for their acts, that they are willing to take some kind of first step towards showing some rehabilitation.

Obviously, that is why they are testifying. They are not testifying because they are good citizens or because they feel that's their duty to come in and testify just without any other motive. But, ladies and gentlemen, the Government submits that in their position as defendants who have pleaded guilty, and have nothing facing them except the sentence, that every motive that they have is to come in and testify truthfully, and to come in and just tell the truth and let the chips fall where they may. That's what their motive was, ladies and gentlemen, and the Government submits when you evaluate their testimony that you will find that that is exactly what they did, and that their statements were accurate statements concerning these cash pay offs.

There was an innuendo suggested, ladies and gentlemen, from time to time that maybe Phil Kaye and Sidney

Stein had known each other a long time ago, and that they were old cronies. There was never one whit of testimony to support that proposition, and the Government submits you should accept their statements as accurate that they didn't know each other before, and the only way they got together was when Walter Wax suggested to Phil Kaye that this guy named Sidney Stein may want to invest in his mining company right before this Stern-Haskell deal.

And when Walter Wax said to Phil Kaye "Come on over and let's make a deal" and Larry Levine set it out and then they told Phil Kaye to go up and collect money from Sidney Stein.

Sure, Phil Kaye was involved in some illegal transactions, but where did he get his start, ladies and gentlemen? Right over here is where he got his start, the Government submits, and you should keep that in mind when you examine the testimony of these witnesses.

Also, there was a suggestion, ladies and gentlemen, that maybe Phil Kaye just made this story up for your benefit, that maybe he came into the U. S. Attorney's office and somebody in the U. S. Attorney's office suggested to him, "Well, you should tell us a story about Levine and Wax, and we'd like to hear that, and so you just make it up and then go tell this jury that."

That was suggested on cross examination, too, ladies and gentlemen, and first of all there was never any evidence whatever to support it, and, in addition, you saw it established beyond any doubt whatever that it was totally, completely and utterly untrue, because what happened? Charles Stillman, his lawyer came in here and testified that Phil Kaye had told him exactly the same story over two years earlier when there wasn't any Government grand jury investigation of Stern-Haskell, when the Government wasn't saying to him, "Tell us about the Stern-Haskell case."

He went and told his lawyer before he was even cooperating with the Government and his lawyer then continued to advise him, and it was a long time later before he told the Government about the Stern-Haskell case.

So, ladies and gentlemen, that should be a lesson to you that some of these innuendos and suggestions that might have been made on cross examination are no evidence whatever, and don't get the idea that just because somebody asks a question that that means there is anything, anything whatever, to back it up, because oftentimes there isn't, and that was excellent example of it. There wasn't a whit of evidence to back that up.

Also, ladies and gentlemen, Kaye was to some extent impeached or attempted to be impeached by the fact

that he had told an exculpatory story before the SEC. In other words, he had gone into the SEC in 1970, before he had talked to Mr. Stillman, and he said something to the effect he doesn't know Larry Levine, he doesn't know Sidney Stein very much and he really doesn't know very much about Stern-Haskell, anything being wrong with that?

Use your common sense, ladies and gentlemen. Does it sound to you totally unheard of that a man who has committed criminal acts will, when he is first questioned about it by an investigative agent before he knows that there is a grand jury investigation and it's really getting serious, will lie about it? Isn't that exactly what you would expect to happen in many situations? The Government submits that that is what you know very well would happen in a number of situations and what you may well find is exactly what happened here.

Sure he lied about it originally. He is now testifying about it after a plea of guilty, ladies and gentlemen, and the Government submits that in this case there is no reason whatever, there is no evidence whatever, to base any finding other than that those witnesses are testifying accurately concerning these cash payoffs, particularly, ladies and gentlemen, since their statements are corroborated by the other facts in the case.

Let's look at some of the other facts in the case in light of what they say.

They told you Levine was the primary market maker and he was the one getting the cash payoffs. Mrs. Nelson analyzed the market and told you Levine made over 90 percent of the quotes and 90 percent of the trades in the stock as well.

Also, it was explained to you how Levine gave preferential treatment to the nominees of Sidney Stein and Norman Rubinson -- that is, the Feiffer account, the B'Noth Jerusalem account.

Also, it was explained to you that Wax was the maker retail broker in the Stern-Haskell stock, corroborating exactly what Stein and Kaye have told you, that he was the one who was getting the pay offs.

Also, it was corroborated that Levine and Wax worked very closely together, that they saw each other almost on a daily basis. The witness Mark testified about that.

Weitzman testified that he heard Stein on the telephone with Levine when he said get me Larry Levine on the telephone, or get me Larry on the telephone and Stein appeared to be giving instructions or directions concerning the trading of Stern-Haskell stock.

Also you will recall the testimony of Stein and others were frequently at Lockwood. Weitzman testified that Stein, Feiffer and Rubinson were frequently at Lockwood.

Mrs. Steinberg, and Mrs. Benenson, the two secretaries from TPC and Gardner Securities, testified that Stein and his friends were at Lockwood -- that is, Larry Levine's firm, or the firm he was the head trader at certainly, they were there so often that they had a telephone number where if they couldn't get them at the 72nd Street apartment, call Lockwood because that's where they were making their offices.

We suggest that also corroborates exactly what those witnesses have told you.

I could go on, ladies and gentlemen. I would like, however, to summarize for you what the Government submits is the proof that the other defendants who are charged in these counts besides Levine and Wax are also guilty on those counts. We would submit to you that it's perfectly apparent that Levine and Wax are guilty as a result of their receiving these cash payoffs. What about Norman Rubinson? What's the proof on him?

Lary Hochen testified that Rubinson was the one that they said they needed the stock -- they needed Stern-Haskell stock for the brokers in New York to make a market.

Also, you will recall Rubinson is the one who tells Weitzman that he can't sell his stock because Stein and Rubinson and Feiffer are the ones who are buying the stock and they don't want to buy Weitzman's stock.

Also, you will recall Kaye said that Rubinson was the one who went over the money in the 72nd Street apartment before it was given to Kaye.

What about the witness Kravetz, ladies and gentlemen? Do you remember what he testified to? It was very brief, but he said that Norman Rubinson had offered him exactly the same kind of deal that was offered to Walter Wax in this case in the Diston Industries case, that Rubinson came in and said he will give him 25 cents or 50 cents a share to sell Diston Industries stock to his customers.

The Government submits that is extremely powerful evidence of Rubinson's knowledge and participation in exactly the same type of arrangement in the Stern-Haskell transaction.

What about Feiffer? The evidence established clearly he was the major seller of the Stern-Haskell stock. Stein testified that Feiffer participated in the meetings with Levine and Wax where the pay off arrangements were set up. Also, he testified it was his understanding that Feiffer had made some of the cash deliveries to Levine. Also you recall Feiffer was the one who Weitzman testified Feiffer explained to him how the market was doing and also that Lockwood was the one handling the market.

Also you recall Miss Steinberg, the secretary, from TPO, testified that the trader in her firm didn't want to trade with Lockwood and they didn't want to sell the stock to Lockwood and Company and that Feiffer was on the other end of the phone telling her to go to Lockwood, go to Lockwood.

The Government submits that is further evidence of Feiffer's awareness of the relationship among the brokerage firms here and exactly how this transaction is going.

Also, you recall Steinberg testified at one point

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she asked Feiffer, "How come Sidney told me I should sell this stock or buy it at 3-1/2 and now he is selling all his stock?" Did Feiffer say, "I don't know what he means because I don't know anything about the stock market?"

Now, he didn't. He gave her the old party line, "Well, it was 3-1/2 then, now it is 4, that is terrific. You should have ought it."

The Government submits there is no way you can find that somebody could be spending as much time as Feiffer was obviously spending with Stein and Rubinson in the 72nd Street apartment on a daily basis, day in and day out, without knowing exactly what is going on.

As the final thing, ladies and gentlemen, you have to again focus on this nominee relationship, that Feiffer has got to know that the fundamental purpose of this nominee relationship is obviously a deceptive and fraudulent device to prevent anybody from knowing, or at least attempt to prevent anybody from knowing, that Stein and Rubinson have an interest in this deal and the Government submits you can infer from that that Feiffer had to figure out whether he is acting as a nominee the purpose of that is to cover up the participation of these other people in an obviously illegal transaction.

What about Chester. The Government submits

Chester is also guilty of these counts related to fraud in the market even though he remainded primarily in that, and he is guilty on the ground that he furnished the stock for sale in the public market knowing that the market was being controlled by Stein and Feiffer and Rubinson.

Recognize at the beginning, ladies and gentlemen, that it is essential from Chester's point of view that the market go up. He doesn't want to be stuck with 58,000 shares of Stern-Haskell stock that are not worth anything. So that is terrific for him if the market goes up. He is at the meeting at Blank Furniture where Stein says the price will be about $5 a share. He sold stock when he was talking about the Mobile Home Ventures, he said that the market there would be prevented from going down because he had associates who would prevent pecple from selling their stock and preventing the market from going down on that basis and you recall that is exactly what happened when Chester wanted to sell some stock, he agreed not to sell it into the market, but rather to sell it to B'Noth Jerusalem.

Also, very powerful testimony of Chester's knowledge came from Hochen. Hochen testified he had a discussion with Chester about why Chester couldn't go through with the Mobile Home Ventures transaction and make a public market.

Chester told Hochen that he couldn't do that because Stein wasn't interested in the deal and he tried to get other brokers interested and what did those brokers tell Chester?

Chester told Hochen that the other brokers had told him they didn't want part of the deal unless Stein was going to guarantee the deal, unless Stein would guarantee the market, because they told him they wanted stein to be in there because Stein had a lot of contacts and would be able to put the stock away with all kinds of public investors who wouldn't sell the stock until Stein told him to sell the stock.

So, ladies and gentlemen, there you have obvious knowledge on Chester's part that he just can't make one of these deals work without Sidney Stein and without Stein's control of the market.

In addition, you had the witnesses from Diston Industries. You recall the witness Fenton testified that Chester said the brokers would raise the price of the stock by trading it back and forth among themselves, and you recall Dessner's testimony changed somewhat. He at one point in the grand jury said he had been more or less assured that the stock would come out at a dollar and a half, Diston would come out at a dollar and a half or two

dollars, and he changed it on the stand to say maybe there would be a market and maybe there wouldn't be a market. The Government submits, in the light of Fenton's testimony, that he had been told the brokers would raise the price by trading it back and forth, in light of Fenton's testimony in contrast to Dessner's, that he, Fenton, was not a lawyer at the time and never gave Dessner an opinion this was a legal transaction, never consulted with Professor Sowards about the transaction and never told Dessner that he had, and you may find Mr. Dessner was not entirely candid with you when he told you the watered down version of the conversation with Mr. Chester.

Looking at Chester's involvement in the situation, ladies and gentlemen, the Government submits it is very clear that his primary purpose was to make a massive amount of money not only by evading the registration requirements but also by relying on Sidney Stein to guarantee the market, make sure the investors would buy the stock, and not sell it until Stein gave his okay.

During the course of the trial undoubtedly Chester has been very funny and of course, that is his stock in trade. Ladies and gentlemen, don't be mistaken about it. He thinks, or the Government submits you may well find, that he thinks you are going to find him not

guilty because you think he is funny.

Well, the Government submits that you should take into account the evidence in the case and not Mr. Chester's jokes, and recognize, ladies and gentlemen, that although he may attempt to present an imagine of someone who is not too smart, he was pretty smart in this group of transactions, when you look at the evidence. He was plenty smart when it came to getting 58,000 shares of Stern-Haskell stock for virtually nothing and it was plenty smart in laundering the stock through the spin off transaction that he had been told in the opinion letters was illegal. He was plenty smart when it came to turning this dime store, Toy King, into an underwriter of public corporations and also to getting $10,000 in his bank account from the stock that was sold in the name of Edgard Reynolds.

Indeed, ladies and gentlemen, you saw at one point in the evidence that Mr. Chester even out-smarted Sidney Stein for a little while, because when Stein starts to get complaints from Larry Levine that somebody is backdooring him, who is doing the backdooring? Bill Chester over there, and he is selling the stock and putting the money into his pocket.

You better believe when you want a sharp pencil and want somebody who can buy Stern-Haskell stock with their

own money, you go to Bill Chester and he is a plenty smart cookie when it comes to this kind of transaction, and don't think because he is funny in this case that that is any reason why you should find him not guilty.

Rather, you should recognize that is his stock in trade and when somebody is trying to swindle you out of your money it is grate if they make you laugh while they are doing it and get the stock with the other hand.

You may recognize that maybe Nordin was a fool in this case, but whose fool was he? The Government submits he was Bill Chester's fool.

Obviously the proof is not the same as to all the defendants, and you have to determine the guilt of all of these defendants separately. The proof is certainly different as to some defendants and different as to other defendants.

For example, as to Mr. Rubinson, the proof is he didn't have his name on anything although he is basically all over the place in Stern-Haskell stock, whereas Mr. Feiffer has his name on everything, but his interest is only a limited interest and the Government's contention is that both of them are involved in a fraudulent deception.

Reynolds' name was on very little and there was very little testimony about Reynolds, but you may find the

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reason for that was that he dealt primarily with Mr. Chester and Mr. Kern, who didn't seem to remember very much of didn't want to tell us about it.

I would like to talk to you about Mr. Haskell for a moment. He is in a peculiar situation in that he is the only defendant who is not a professional, or anything close to it, in the securities market. You recall the evidence is that he is primarily a used car salesman. The Government would submit that although there is some evidence that is somewhat sympathetic to Mr. Haskell's point of view in this case, there is still plenty of evidence to justify a finding beyond a reasonable doubt that he joined the illegal enterprise that was in operation here.

You recall the evidence was, first of all, that he was not a professional, that he didn't eventually get any money directly out of the sale of the stock. You recall Stein's testimony saying "Well, Mr. Haskell, you've been taken and you should have gotten some money but we are not going to give you money and you should go check with your lawyer" and according to Stein, he checked with his lawyer and came back and said he didn't want any part of those proceedings.

That would appear to be sympathetic testimony to Mr. Haskell and you should consider it in making your

determination to him. That doesn't involve any of the other defendants in this case.

However, the Government submits there is other evidence from which you could find he knowingly joined the conspiracy in this case and was responsible for the criminal acts that were committed by others and foreseeable by him.

First of all, ladies and gentlemen, it is obvious that Mr. Haskell knows that he is avoiding the normal registration requirement under the law. Also, it is obvious he doesn't follow the ordinary course of business here. He doesn't go down to Wall Street and get any number of reputable brokers down there to tell him how to run his public offering, but rather he goes to Florida to Bill Chester's house down there, for some reason, and the Government submits you can take that into account as possibly a red flag that might have been even in Mr. Haskell's mind that there is something questionable about this transaction.

Also, at the meeting at the furniture company, you recall them discussing nominees, hiding what is going on, and you may find Mr. Haskell should have learned something from that.

Also they say they will make the stock worth $5 a share. You may find Mr. Haskell could have wondered

how they were going to do that. It was never worth $5 a share before.

Also you recall he used Mr. Rubinson's attorney and doesn't ever get any independent legal advice as to the legality of the spin off arrangement. Also you recall that during the course of the transaction, at the very early stages, Mr. Haskell thinks he is going to get $5,000 for the Stern-Haskell stock. It very rapidly appears -- we don't know at what point he found it out, but it rapidly appears he is not going to get $5,000 but there is another $5,000 to go back the other way to Bill Chester. The Government submits a reasonable person might have said to himself, "This is looking like a pretty shady transaction. I wonder what is going on." Also he authorized the 350,000 shares of investment stock to be issued and he pressed Michael Gardner to get that stock at a cheap price.

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You could also take into account that Haskell stood to make enormous profits if this arrangement were eventually successful with his 320,000 shares of stock at $5 a share and he would have made enormous profits.

If he wanted to make acquisitions with this stock, his acquisition would be determined in large part by the price of the stock, because if he wants to get another company and the stock is $20 a share, he has to give away less stock.

He has a very, very vital interest in the price of this stock.

Ladies and gentlemen, the Government submits you could find beyond a reasonable doubt that Haskell knew this scheme was an illegal scheme or that he believed it was very questionable and he purposely avoided finding out whether it was truly legal by continuing only to get legal advice from Mr. Rubinson and his associates.

Basically, ladies and gentlemen, when you analyze it in light of your own common sense, the Government submits you may find that where the primary danger was to the public investors and where the primary advantage was to Mr. Haskell in making a massive amount of money, that he did not scrutinize this transaction by which is company went pbulic nearly as carefully as he would have examined

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your car if you had brought it in to sell it to him, and you might keep that in mind, ladies and gentlemen, before you decide that Mr. Haskell was totally ignorant in this case.

Let's turn briefly to the wire fraud counts, ladies and gentlemen, and I think the proof is extremely clear there.

Basically the Government charges there were two telephone calls made during the course of a scheme to defraud and the primary operator in this scheme was Michael Gardner.

The gist of the scheme was very simple, and that was that Mr. Gardner would fraudulently use Stern-Haskell stock that was restricted stock, at a bank as collateral without telling the bank that it really wasn't worth what they might think and it was restricted stock rather than free trading stock.

Ladies and gentlemen, it is obvious that Mr. Gardner knew that in the middle of July when he sought to get this loan because you have in evidence his letter of July 14, 1969 recognizing that this stock he is getting cannot be sold without registration by the SEC.

Two days later, ladies and gentlemen, you have Mr. Gardner writing to Mr. LaLone saying he has this Stern-

Haskell stock and he says it is registered stock and he uses the word "registered" twice, once in terms of SEC registration and secondly when he says, "It is registered in my name."

If that is not enough to establish it, you have Mr. Gardner's net worth statement that was put together on July 23rd, 1969, and you recall it was actually typed by Mr. LaLone based on information given to him by Mr. Gardner.

It says," Investments: Marketable securities, 50,000 shares Stern-Haskell, Inc.

"Investments: Lettered stock" -- in other words, stock that bears the legend or restricted investment stock, and other stocks are listed.

Obviously, ladies and gentlemen, the Government submits that if Mr. Gardner wanted to be truthful concerning this stock he would have put the Stern-Haskell stock lettered category and disclosed to Mr. LaLone it was investment stock but he disguised the true nature of the stock and called it free trading stock, and the reason he was able to do that was because, of course, he had no investment legend on it and that is how the Government charges Mr. Chester and Mr. Rubinson are in this count because they provided stock that was truly investment stock, really restricted stock, to Mr. Gardner, without

the appropriate investment legend on it.

You recall, as additional proof of Mr. Gardner's fraudulent intent and the Government submits you can look at the letter of July 16, 1969 and Mr. Gardner apparently didn't like to say this company was a used car company so, instead, he told Mr. Carroll over the telephone it was a manufacturer of pipe products.

Mr. Carroll could not find out differently because there was no prospectus.

The Government submits you may certainly find that Mr. Gardner knowingly and intentionally defrauded that bank.

In addition, you may find that Chester and Rubinson aided and abetted him in doing that because there could have been only one reason why they would issue that investment stock without the legend on it, and that is so that Michael Gardner could go off and defraud somebody.

There wasn't any other reason for leaving that investment legend off the stock.

There are two counts there, ladies and gentlemen: One count is the telephone call of LaLone to Carroll on July 24, 1969.

You recall he testified that he made the telephone call from New York toMontreal to set up the loan arrangement

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at that time before LaLone went up to Montreal to actually make the final arrangements.

In additon, ladies and gentlemen, there is the telephone call of December 30, 1969 and you have a memorandum of that in evidence, where Mr. Carroll called Mr. Gardner and Mr. Gradner reiterated the fact that this must be free trading stock and there must be some kind of error because it was certainly free trading stock.

Another false statement.

You recall that Mr. LaLone got the same information from Mr. Gardner in mid-December and he made another memorandum of that telephone conversation.

Basically, Mr. Gardner is telling everybody that this is nothing more than free trading stock and it is not restricted in any manner.

In that telephone call, ladies and gentlemen, the only question really is where Mr. Gardner happened to be at the time he received the call because there is a venue requirement and he has to have been in the Southern District of New York.

The Government submits you may well find he was in the Southern District of New York based on what Mr. Carroll said, but if on the basis of other witnesses who stated he was in Miami, not on that day, December 30,but

on other days around there, and if you determine he was not in the Southern District of New York on that day then Mr. Gardner would not be guilty of the final count, of the December 30th telephone call, but you could certainly use the fact that he lied again in the December 30th telephone call as he was corroborating the fact that he lied initially in the entire scheme or transaction which caused Mr. LaLone to make the telephone call to New York.

In addition, ladies and gentlemen, the Government submits you could we-l find Mr. Carroll was correct, that if Mr. Gardner had not been in New York, there would have been some reason why he would remember it and it was his impression, or his thought, anyway, that Mr. Gardner was in New York at the time of the December telephone conversation.

Finally, ladies and gentlemen, there is the conspiracy count.

All defendants are charged in that. The gist of the conspiracy count is that they tacitly in some manner agreed to commit the acts that were committed, the other crimes that were committed.

That is a separate crime, although the Government submits that in evaluating that count you would rely on exactly the same evidence I have already been describing

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of their commission ultimately of the substantive counts and the Government submits when you do that, you cannot find otherwise than that the conspiracy as charged here did exist, that its objects were the use of fraud in the sale of unregistered stock, the fraudulent manipulation of the market for that stock, the use of wire fraud in connection with the transaction at the bank.

The Government does not contend and does not have to prove that each defendant knew of all of the objectives of the conpsiracy but rather that each defendant joined the conspiracy with knowledge of at least one of the unlawful objects, and that is what the Government has set out to do because, as I explained to you earlier, there were various roles that these defendants had and various activities that some of them specialized in, and some of them may not have even known about although they were committed by other co-conspirators during the course of the conspiracy.

So, ladies and gentlemen, the Government submits that when you examine all of the evidence as you find it, when you compare it, sift through it, when you look at it inlight of your own common sense, your knowledge of human nature, and the ways of the wo4ld, and attempt to evaluate it from every point of view, ladies and gentlemen, that

youare going to find that indeed the charges here are established beyond any reasonable doubt, that these defendants did join in this conspiracy with full knowledge of its unlawful objectives, that they committed the various substantive crimes that were charged, and consequently that you should find them guilty.

Thank you.

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